

ANTH 680: Tutorial Reading 1, The Anthropology of Law

Prof. Ronald Niezen

Fall 2020
Wed, 3:05 - 5:55
Via Zoom

Office Hours: By appointment
Skype: ronald.niezen
Email: ronald.niezen@mcgill.ca

1. Course description:

This course has three principal goals: The first is to introduce students to the key issues, concepts, and methods of the anthropology of law as a distinct field of research. This part of the course in the first several weeks introduces the intellectual history of legal anthropology, outlining the legacy of the most influential approaches to the comparative and ethnographic study of legal systems. Some of the pioneering anthropologists in British social anthropology in particular were centrally concerned with problems relating to law: the sources of social order, obedience, and dispute resolution in the absence of literacy and bureaucracy.

Second, the anthropology of law will be approached as a sub-discipline with important things to say about contemporary cultural contests, activism, group representation, and identity formation. It has emerged in the past decade or so as a particularly ground-breaking field of research, in part because it has become central to understanding the changed dynamics of cultural expression and collective identity through new avenues of communication and transnational networking. In many parts of the world, legal systems are “pluralizing,” often integrating local conceptions of justice with formal procedures and institutions. At the same time, more people and organizations than ever before are using the institutions and mechanisms of law to achieve conditions of equal access to the benefits of rights, recognition, and prosperity, above all through new standards and processes of human rights. The challenges of identifying and interpreting the controversies that follow from claims of difference and distinct rights alongside claims of equality and uniform standards of justice are central to the emerging field of legal anthropology.

Finally, the course is intended to develop the ethnographic skills needed to gather information on legal phenomena. The distinct challenges of legal anthropology include ethnographic observation in institutional settings and the significance of legal documents for ethnographic understanding, will be addressed in class and in the assignments.

Requirements:

Reading analysis: x 6, 2 to 3 pages each, due the day of the reading assignment: 60%
Ethnographic reports, due November 23, 5:00 pm. 40%

Reading analysis. Students are asked to select any 6 weekly reading assignments and to offer short analytical review of each. The model is that of a brief book review. Since one goal of this assignment is to facilitate deeper class discussion, the reviews are due on the day of the class meetings in which the reading has been assigned. Late reading analyses will not be accepted.

Ethnographic report. For this assignment, students are asked to conduct and report on their own foray into institutional ethnography. The exercise consists of making two or more visits to the same venue to make observations, writing field notes for each visit, and reporting on the process of investigation and discovery. Questions that you might address are: What obstacles, if any, did you encounter in gaining access to the venue? What were the reactions of others, if any, to your presence? What difference(s) did you find between your first and second (and, if applicable, subsequent) visits in terms of what you observed? Your choice of venue will of course have to follow the limits of Covid closures and safety requirements. You may, if you wish, choose to do an online investigation, addressing the same questions as above, but adding something about what you might not be seeing or properly understanding from your online vantage point. (This is speculative, I know, because if you can't see it, you can't report on it, but all the same it might be worth thinking about.) Your paper based on this exercise is not a research assignment, although you may add references if you choose. Rather, it should be a report of the process of research. You are not expected to do a complete ethnography, so loose ends and empty spaces, particularly those properly acknowledged and commented on, are welcome. The ethnographic assignment will be assessed in part with reference to the quality your ethnographic observations. (How to achieve this will be discussed in class meetings.)

The completed paper should be no more than ten pages, double spaced, 12 Times New Roman font, default margins, etc.

All assignments must be successfully completed to receive course credit. Ethnographic reports submitted after the submission deadline without either prior arrangement with the instructor or a documented excuse will be penalized at a rate of 10% of the assignment's value per day. All assignments will be submitted via MyCourses.

3. Course activity

Class time will consist of one class meeting (Wed., 3:05 - 5:55) each week. Class time will consist of brief lectures, discussion of readings, and methods preparation.

4. Readings.

Readings consist of 60 – 90 pages of assigned reading per week. Readings form the basis of the class activity; and each week's assignment should be completed prior to the class meetings. Recommended readings are intended as suggestions for further exploration.

The following two books will be covered in greater detail and may be purchased from an online bookseller. (Some copies of #HumanRights may be available at Paragraph Books.)

Merry, Sally Engle. 2006. *Human Rights and Gender Violence: Translating International Law into Local Justice*. Chicago: University of Chicago Press.

Niezen, Ronald. 2020. #HumanRights: The Technologies and Politics of Justice Claims in Practice.

All other readings will be made available on MyCourses. Recommended and assigned readings may be changed during the course to accommodate new discoveries, although the general topics will remain the same.

5. Schedule of Classes and Topics.

Week 1, Sept 8: Introduction.

Moore, Sally Falk. 2001. "Certainties Undone: 50 years of Legal Anthropology." *Journal of the Royal Anthropological Institute*. 7: 95-116.

Nader, Laura. Up the Anthropologist: Perspectives Gained from Studying Up. In *Reinventing Anthropology*, Dell H. Hymes (ed.). New York, Pantheon, 284-311.

Recommended:

Kandel, Randy 1992. "How Lawyers and Anthropologists Think Differently" pp 1-5 in *Double Vision: Anthropologists at Law*, R.F. Kandel (ed). Napa Bulletin 11.

Week 2, Sept 15: Law and Social Progress: Nineteenth Century Paradigms.

Maine, Henry. *Ancient Law*, pp. 73-100.

Morgan, Lewis Henry. *Ancient Society*. Part 1, ch. 1.

Durkheim, Emile. *The Division of Labour in Society*. Ch. 2, 3.

Week 3, Sept 22: Early Ethnographies of Judicial Process.

Malinowski, Bronislaw. 2009. *Crime and Custom in Savage Society*. New York: Routledge. Pp. 55-68.

Richards, Audrey. 1982. *Chisungu: A Girl's Initiation Ceremony among the Bemba of Zambia*. New York: Routledge. Pp. 134-169.

Bohannon, Paul. 1989. Justice and Judgment Among the Tiv. Selection from Sally Falk Moore, *Law and Anthropology: A Reader*, pp. 87-94.

Gluckman, Max. The Judicial Process Among the Barotse of Northern Rhodesia. Selection from Sally Falk Moore, *Law and Anthropology: A Reader*, pp. 84-86.

Recommended:

Evans-Pritchard, E.E. 1937. *Witchcraft, Oracles and Magic among the Azande*. Cambridge UK: Cambridge University Press. Pp. 21-49.

Week 4, Sept 29: Customary Law and Legal Pluralism.

Ranger, Terrence. 1992. "The Invention of Tradition in Colonial Africa," in *The Invention of Tradition*, edited by Eric Hobsbawn and Terrence Ranger. Cambridge, UK: Cambridge University Press. Pp. 211-212 and 229-262.

Von Benda-Beckmann, Franz. 2002. Who's Afraid of Legal Pluralism? *Journal of Legal Pluralism and Unofficial Law*. 47: 37-82.

Lee, Richard. 1969 Eating Christmas in the Kalahari. *Natural History*.

Recommended:

Moore, Sally Falk. 1986. Social Facts and Fabrications; "Customary" law on Kilimanjaro, 1880-1980. Pp.1-12.

Schapera, Isaac. 1970. *A Handbook of Tswana Law and Custom*. London: Frank Cass. Pp. xi – xxiii; 38-46.

Chanock, Martin. 2007. *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia*. London: Heinemann.

Günther, Klaus. 2008. Legal Pluralism or Uniform Concept of Law? Globalisation as a Problem of Legal Theory. *No Foundations*. 5: 5-21.

Merry, S. E. 1988. 'Legal Pluralism' *Law and Society Review*. 22: 869-896.

Week 5, Oct 6: The Anthropology of Law Online.

Coleman, Gabriella. 2013. *Coding Freedom: The Ethics and Aesthetics of Hacking*. Princeton, NJ: Princeton University Press. Pp. 1-20; 25-60.

Lupton, Deborah. (editor) (2020) Doing fieldwork in a pandemic (crowd-sourced document).

Available at:

<https://docs.google.com/document/d/1clGjGABB2h2qbduTgfqribHmog9B6P0NvMgVuiHZC18/edit?ts=5e88ae0a#>

Week 6, Oct 13: Law, Culture, and Juridification.

Cowan, Jane. 2006. "Culture and Rights after Culture and Rights." *American Anthropologist*. 108(1): 9-24.

Comaroff, John L. and Jean Comaroff. 2006. Law and Disorder in the Postcolony: An Introduction. In *Law and Disorder in the Postcolony*. Jean Comaroff and John Comaroff, eds. Chicago: University of Chicago Press. Pp. 1-56.

Recommended:

Cowan, Jane, Marie-Bénédicte Dembour and Richard Wilson (eds.). 2001. *Culture and Rights: Anthropological Perspectives*. Cambridge, UK: Cambridge University Press.

Week 7, Oct 20: Human Rights in Practice.

Merry, Sally Engle. 2006. *Human Rights and Gender Violence: Translating International Law into Local Justice*. Chicago: University of Chicago Press. Chs. 5 and 6.

Niezen, Ronald. 2020. *#HumanRights: The Technologies and Politics of Justice Claims in Practice*. Stanford: Stanford University Press, Chs. 2 and 3.

Recommended:

Farmer, Paul. "Global Health Equity and the Missing Weapons of Mass Salvation," in *To Repair the World: Paul Farmer Speaks to the Next Generation*. Berkeley and Los Angeles: University of California Press.

Englund, Harri. 2006. *Prisoners of Freedom*. Berkeley and Los Angeles: University of California Press.

Engle, Karen. 2001. 'From Skepticism to Embrace: Human Rights and the American Anthropological Association from 1947-2000'. *Human Rights Quarterly*. 23(3): 536-559.

Goodale, Mark and Sally Engle Merry. 2007. *The Practice of Human Rights: Tracking Law Between the Global and the Local*. Cambridge: Cambridge University Press.

Week 8, Oct 27: The Ethnography of Judicial Process.

Good, Anthony. 2004. 'Undoubtedly an Expert': Anthropologists in British Asylum Courts. *Journal of the Royal Anthropological Institute*. 10: 113-133.

Clifford, James. 1988. Identity in Mashpee. In *The Predicament of Culture: Twentieth Century Ethnography, Literature, and Art*. Cambridge, MA: Harvard University Press.

Sapignoli, Maria. 2017. *Hunting Justice: Displacement, Law, and Activism in the Kalahari*. Cambridge, UK: Cambridge University Press. Ch. 6, pp. 208-250.

Recommended:

Shahla Talebi 2019. Ethnography of Witnessing and Ethnography as Witnessing: Topographies of Two Court Hearings. *PoLAR* 42 (2): 226-243.

Brickey, Stephen and Dan Miller. 1975. Bureaucratic Due Process: An Ethnography of a Traffic Court. *Social Problems*, 22 (5): 688–697.

Week 9, Nov 3: The Ethnography of Institutions.

Niezen Ronald, Sapignoli Maria (eds) 2017. Introduction, in *Palaces of Hope: The Anthropology of Global Organizations*, Cambridge University Press.

Schia, Niels. 2013. Being Part of the Parade: “Going Native” in the United Nations Security Council. *Political and Legal Anthropology Review (PoLAR)*. 36(1): 138-156.

Recommended:

Clifford, James. 1988. Identity in Mashpee. In *The Predicament of Culture: Twentieth Century Ethnography, Literature, and Art*. Cambridge, MA: Harvard University Press.

Abélès, Marc. 2004. Identity and Borders: An Anthropological Approach to EU Institutions. On-Line Working Papers from the Center for 21st Century Studies. University of Wisconsin-Milwaukee.

Week 10, Nov 10: Transnational Movements and Activism.

Merry, Sally Engle. 2006. *Human Rights and Gender Violence*. Ch. 2.

Niezen, Ronald. 2020. *#HumanRights: The Technologies and Politics of Justice Claims in Practice*. Stanford: Stanford University Press, Ch 4 “Shouting Against the Wind”.

Recommended:

Niezen, Ronald. 2003. *The Origins of Indigenism: Human Rights and the Politics of Identity*. Berkeley and Los Angeles: University of California Press. Ch. 2.

Thoreson, Ryan R. 2014. *Transnational LGBT Activism. Working for Sexual Rights Worldwide*. Minneapolis: University of Minnesota Press.

Hodgson, Dorothy., 2009, “Becoming Indigenous in Africa.” *African Studies Review*. 52(3): 1-32.

Week 11, Nov 17: Environmental Change and Rights to (and of) Nature.

Noor Johnson and David Rojas. 2017. Contrasting Values of Forests and Ice in the Making of a Global Climate Agreement, in *Palaces of Hope: The Anthropology of Global Organizations*. Ronald Niezen and Maria Sapignoli (eds.). Cambridge: Cambridge University Press.

Stone Christopher. 1972. Should Trees Have Standing?—Toward Legal Rights for Natural Objects. *California Law Review*. 45: 450-501.

*****Ethnographic reports, due November 23, 5:00 pm*****

Week 12, Nov 24: Speech Crime and the Politics of Hate.

Ott, Brian. 2017. The Age of Twitter: Donald J. Trump and the Politics of Debasement. *Critical Studies in Media Communication*. 31(4): 59-68.

Wilson, Richard. 2017. *Incitement on Trial: Prosecuting International Speech Crimes*. Ch. 7.

Week 13, Dec 1: Topic and readings t.b.a.

5. Statements on academic integrity and language:

Statement on academic integrity:

McGill University values academic integrity. Therefore, all students must understand the meaning and consequences of cheating, plagiarism and other academic offences under the code of student conduct and disciplinary procedures (see www.mcgill.ca/integrity for more information).

L'université McGill attache une haute importance à l'honnêteté académique. Il incombe par conséquent à tous les étudiants de comprendre ce que l'on entend par tricherie, plagiat et autres infractions académiques, ainsi que les conséquences que peuvent avoir de telles actions, selon le code de conduite de l'étudiant et des procédures disciplinaires (pour des plus amples renseignements, veuillez consulter le site www.mcgill.ca/integrity).

Statement on language:

In accordance with McGill University's Charter of Students' Rights, students in this course have the right to submit in English or French any written work that is to be graded.

Conformément à la Charte des droits de l'étudiant de l'Université McGill, chaque étudiant a le droit de soumettre en français ou en anglais tout travail écrit devant être noté.