

## ANTH 222 – Legal Anthropology

**Instructor:** Justin Raycraft

**Class:** 8:35 am - 9:55 am (EST), Tuesdays and Thursdays (remote delivery)

**Office hours:** 2pm-4pm (EST) on Tuesdays (remote via zoom link)

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**Teaching Assistants:** TBD

### Course Description

How do social institutions function in the context of society to promote solidarity and resolve disputes? And how do these mechanisms operate across cultures, and at different scales? In wrestling with these key questions, this course will provide an overview of anthropological engagements with the field of law. We will touch on topics of relevance to the social lives of individuals and collectives including the role of customary practices and oral traditions in small-scale societies, the political forces of the territorial state, and the intersecting influences of international law. In doing so, we will challenge our preconceptions as we consider what constitutes ‘morality’ vis-a-vis universal notions of human rights, and culturally-specific ways of knowing. We will explore the ways in which different institutional arrangements for governing and managing people supersede one another and coexist in the context of legal pluralism. And finally, we will question what all this means for the anthropologist tasked with *doing* legal ethnography. Ultimately, the course aims to instill an appreciation for the theoretical complexity of law, as it exists across cultures, and the wealth of possibilities that this field of study can offer those with interest in the anthropological project.

### Course Requirements

Method for Evaluation	% of Final Grade
Take-home Exam #1	30
Take-home Exam #2	30
Take-home Exam #3	30
Participation	10

### Take-home Examinations

The take-home Examinations will involve an evaluation of students’ knowledge of the course materials. The format will be similar for all of the exams. The first exam will cover reading materials from the first four weeks of class. The second will assess students’ understandings of the materials from weeks 5-8. The first two Take-home examinations will each comprise four question prompts for short answer responses, from which students will select two to answer. Each question will relate to the central theme of one particular week of class, and as such each response should reflect a grasp of that week’s reading material. External references are **NOT** advised, as this is an exercise in working through the course materials. The questions will evoke students’ understandings of key themes and concepts in relation to a specific reading, or set of readings. Each response will be limited to 700 words maximum, and responses longer than this upper limit will be penalized a point. Each short answer response will be graded out of 10 points.

The first two Take-home Examinations will be posted to MyCourses on Jan. 28, and Feb. 25 respectively, and each will be due one week from their initial posting date at 5pm EST. The third Take-home Exam will follow a similar format, but will cover the course materials from weeks 10-15, and will present the students with six question prompts, from which students will answer three (700 word limit responses). The third Take-home Exam will be posted to MyCourses during the Final Exam period on April 19, and will be due one week later.

### **Plagiarism detection software**

Work submitted for evaluation as part of this course may be checked with text matching software within MyCourses (Urkund).

### **Participation**

Class participation will be evaluated through short written summaries of the weekly reading materials (minimum of 5 sentences). Students will annotate one reading of choice from the week's assigned readings. The process of annotating readings through short summaries is a crucial skill that will teach students to extract key pieces of information from texts and organize them into short narrative abstracts in their own words to aid with personal understanding. This learning process will serve students well in preparation for their Take-home Examinations, and beyond this course for those with interests in later pursuing graduate school or postgraduate study in the field of law. The summaries will be graded on a completion basis. They may be assigned grades of 0 (not submitted); .5 (submitted but the summary is cursory, late, incomplete, or filled with spelling/grammatical mistakes); 1 (submitted and summary is sufficient for basic understanding of key points). Students are required to submit a total of seven weekly summaries. The submissions must be made in separate weeks, but students will have the authority to decide which weeks they do not submit summaries, depending on their personal workload, interests, and accessibility considerations. There will be no bonus marks for submitting more than seven article summaries. If more than seven are submitted, the most recent seven will be used to calculate the participation grade.

### **Assigned Readings**

Students will not be required to purchase textbooks or course packages for this course. All reading materials will be available as .pdf or .docx files via the MyCourses portal. When working through the reading material, it is not necessary to memorize everything (e.g. dates), but rather, key concepts and arguments, which students can draw from in writing their Take-home Examinations. Course readings will comprise between 30-80 pages per week. Taken together, the reading materials offer an overview of some important themes with central significance to the anthropology of law. They are not in and of themselves comprehensive. Take-home Examinations will provide students with a one week window to engage closely with their readings of choice, offering some flexibility for choosing which readings to dive into in greater depth. The intention here is for students to engage thoroughly with those topics that interest them most, while also prioritizing flexibility to take into account accessibility and workload concerns in the context of the COVID-19 pandemic. "Further readings" are not required for this course, and are listed for those with intrinsic interest in the given topic.

### **Course Lectures**

Lectures will be pre-recorded via Zoom and uploaded to MyCourses the night before class, with the expectation that students will watch the lectures during the allocated class time.

Opportunities for students to virtually meet with the instructor and the TAs to discuss the course materials will be available during designated Zoom office hours. Lectures will be shorter than the standard 1.5 hr time slots allotted for class time to take into account the fact that pre-recorded lectures often contain more streamlined presentation of course materials.

### **Submissions and Deadlines**

Take home examinations are due at 5pm EST on the specified deadlines. Article summaries are due at 5pm EST on the day of the Thursday lecture. All submissions are to be made via the MyCourses web portal in the designated submissions folders.

### **McGill University Policy 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/students/srr/honest/](http://www.mcgill.ca/students/srr/honest/) for more information).

### **Language Policy**

In accord with McGill University's Charter of Students' Rights, students in this course have the right to submit in English or in 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 (sauf dans le cas des cours dont l'un des objets est la maîtrise d'une langue).*

### **Policy on Reproduction of Video Lectures**

I remind everyone of their responsibility in ensuring that lecture videos and associated material are not reproduced or placed in the public domain. This means that each of you can use it for your educational (and research) purposes, but you cannot allow others to use it, by putting it up on the Internet or by giving it or selling it to others who may also copy it and make it available. Please refer to McGill's [Guidelines for Instructors and Students on Remote Teaching and Learning](#) for further information. Thank you very much for your help with this.

## **Course Schedule (Jan. 7 – April 15, 2021)**

### **Week 1 – Introduction – Law as Cultural Practice (Jan. 7)**

Moore, Sally Falk. "Certainties Undone: Fifty Turbulent Years of Legal Anthropology, 1949-1999." *The Journal of the Royal Anthropological Institute* 7, no. 1 (2001): 95-116.

Further Reading:

Mark Goodale. 2017. Introduction: From Status to Contract to Cosmopolitanism *In Anthropology and Law* (pg. 1-32).

Nader, Laura. "The Anthropological Study of Law." *American Anthropologist*, New Series, 67, no. 6 (1965): 3-32.

L. Nader, Introduction to *The Life of the Law* (Berkeley: University of California Press 2002).

### **Week 2 – Knowledge and Institutions (Jan. 12,14)**

Barth, Fredrik. "Other Knowledge and Other Ways of Knowing." *Journal of Anthropological Research* 51, no. 1 (1995): 65-68.

Mary Douglas 1986. How Institutions think. Introduction and Chapter 1 Institutions cannot have minds of their own. (Pgs. 1-20)

Emile Durkheim What is a social fact? In *Rules of the Sociological method* 1982. (Pgs. 50-60)

Further Reading:

#### Anthropology of Ontologies

Eduardo Kohn Annual Review of Anthropology 2015 44:1, 311-327 (particularly the operationalized definition of ontology on pg. 311)

### **Week 3 – Customs, Oral traditions and Codification (Jan. 19, 21)**

Bronislaw Malinowski. Introduction and Part 1. Primitive Law and Order (Pgs. 4-20) *In Crime and Custom in Savage Society*.

Cruikshank, Julie. "Oral Tradition and Oral History: Reviewing Some Issues." *The Canadian Historical Review*, vol. 75 no. 3, 1994, p. 403-418. *Project MUSE* [muse.jhu.edu/article/574633](https://muse.jhu.edu/article/574633).

Bruce Miller 2011. Oral History on Trial: Recognizing Aboriginal Narratives in the Courts (Preface and Introduction)

Bennett, T. W., and T. Vermeulen. "Codification of Customary Law." *Journal of African Law* 24, no. 2 (1980): 206-19. Accessed December 11, 2020.

Further reading:

Julie Cruickshank 1992 Invention of Anthropology in British Columbia's Supreme Court: Oral Tradition as Evidence in *Delgamuukw v. B.C.* (pgs. 1-18)

Marjorie Mandelstam Balzer (2008) Editor's Introduction: Customary Law and Values, *Anthropology & Archaeology of Eurasia*, 47:3, 3-8, DOI: [10.2753/AAE1061-1959470300](https://doi.org/10.2753/AAE1061-1959470300)

Lucy Mair - Law in an Age-based Political system: The Arusha (pp. 137-148)

Griffiths A. (2017). Broadening the Legal Academy, the Study of Customary Law: The Case for Social-Scientific and Anthropological Perspectives. *Potchefstroom Electronic Law Journal*, 20, 1-24. <https://doi.org/10.17159/1727-3781/2017/v20i0a3263>

Bruce Miller 2011. Issues in Law and Social Science. In *Oral History on Trial*. (approx. 30 pages)

Negotiating Jurisprudence in Tribal Court and the Emergence of a Tribal State: The Lac du Flambeau Ojibwe Larry Nesper *Current Anthropology* 2007 48:5, 675-699.

Posey DA. Commodification of the sacred through intellectual property rights. *J Ethnopharmacol.* 2002 Nov;83(1-2):3-12. doi: 10.1016/s0378-8741(02)00189-7. PMID: 12413701.

Barber, Karin. "Quotation in the Constitution of Yoruba Oral Texts." *Research in African Literatures* 30, no. 2 (1999): 17-41. [doi:10.1353/ral.2005.0057](https://doi.org/10.1353/ral.2005.0057).

Karin Barber. The constitution of oral texts In *The Anthropology of Texts, Persons and Publics* (pp. 67-102)  
[https://complit.utoronto.ca/wp-content/uploads/COL100H\\_Karin\\_Barber.pdf](https://complit.utoronto.ca/wp-content/uploads/COL100H_Karin_Barber.pdf)

#### **Week 4 – The State (Jan. 26, 28)**

Scott, James C. 1998. Introduction to *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*. New Haven, Connecticut: Yale University Press. (Pgs. 1-9)

Max Weber – Politics as Vocation (Introduction) (Pgs. 1-27)

Antonio Gramsci State and Civil Society (pp. 71-86)

Further Reading:

Jean Jacques Rousseau. The social contract or principles of political right. 1762. Book 1 (pgs. 1-17).

John Locke – Two Treatises of Government

Thomas Hobbes – Leviathan

Max Weber - Bureaucracy (pgs. 199-244)

Ronald Niezen. Indigenism, Ethnicity, and the State. *In* The Origins of indigenism: human rights at the politics of identity (Pgs. 193-214).

Giddens, Anthony, 1985. Introduction to The Nation-state and Violence. Polity Press, Cambridge.

### **TAKE HOME MIDTERM EXAM #1 POSTED ON JAN. 28, 2021**

#### **Week 5 – Ideology and Hegemony (Feb. 2, 4)**

Ronald Niezen. 2000. (Pgs. 38-41) “Prelude to Nation-Building” *In* Spirit Wars

Antonio Gramsci – Ideology and Ideological State Apparatuses (pp. 86-112)

Hobsbawm – Invention of Tradition – Introduction: Inventing Traditions (Pgs. 1-15)

Benedict Anderson – Imagined Communities (Introduction) (Pgs. 1-9)

Further reading:

Antonio Gramsci. 1970. *Prison Notebooks*. Vol. 2. New York, NY: Columbia University Press. (Introduction)

### **TAKE HOME MIDTERM EXAM #1 DUE ON FEB. 4, 2021**

#### **Week 6 – Governmentality and the Conduct of Conduct (Feb. 9, 11)**

Foucault, Michel. 1976. Chapter 11 in “*Society Must Be Defended*” *Lectures at the College De France 1975-76*. Translated by David Macey. New York: Picador (Pgs. 239-263).

Foucault, Michel. 1991. "Governmentality." In *The Foucault Effect: Studies in Governmentality*, edited by Mauro Bertani and Alessandro Fontana. Chicago: University of Chicago Press. (Pgs. 87-104)

Further Reading:

- Fletcher, Robert. 2010. "Neoliberal Environmentalism: Towards a Poststructuralist Political Ecology of the Conservation Debate." *Conservation and Society* 8 (3):171.
- Fletcher, Robert. 2017. "Environmentalism Unbound: Multiple Governmentalities in Environmental Politics." *Geoforum* 85:311-315.
- Foucault, Michel. 1977. Introduction to "Discipline and Punish (A. Sheridan, Trans.)." *New York: Pantheon*.
- Foucault, Michel. 1978b. "The History of Sexuality: An Introduction. Vol. 1." *New York: Vintage* 208. (Introduction)
- Foucault, Michel. 1982. "The Subject and Power." *Critical Inquiry* 8 (4):777-795.

### **Week 7 – Space and Territory (Feb. 16, 18)**

John A. Agnew (2013): Territory, Politics, Governance, Territory, Politics, Governance, 1:1, 1-4

Sack, Robert D. 1983. "Human Territoriality: A Theory." *Annals of the Association of American Geographers* 73 (1):55-74.

Taylor, Peter J. 1994. "The State as Container: Territoriality in the Modern World-System." *Progress in Human Geography* 18 (2):151-162.

Vandergest, Peter, and Nancy L. Peluso. 1995. "Territorialization and State Power in Thailand." *Theory and Society* 24 (3):385-426.

Further Reading:

Braun, Bruce. 2000. "Producing Vertical Territory: Geology and Governmentality in Late Victorian Canada." *Ecumene* 7 (1):7-46.

Vaccaro, Ismael, Allan C. Dawson, and Laura Zanotti. 2014. "Introduction." In *Negotiating Territoriality: Spatial Dialogues between State and Tradition*, 15-32. London, UK: Routledge.

Vandergest, Peter. 1996. "Mapping Nature: Territorialization of Forest Rights in Thailand." *Society & Natural Resources* 9 (2):159-175.

Delaney, David. 2005. "Entering the Territory of Territory." In *Territory: A Short Introduction*, 1-33. Malden, MA: Blackwell Publishing.

Elden, Stuart, 2010. Land, Terrain, Territory. *Prog. Human Geograp.* 34 (6), 799–817.

### **Week 8 – Property Theory (Feb. 23, 25)**

Bromley, D.W. The commons, common property, and environmental policy. *Environ Resource Econ* 2, 1–17 (1992). <https://doi.org/10.1007/BF00324686>

Galaty, J.G., 2016. Reasserting the commons: Pastoral contestations of private and state lands in East Africa. *International Journal of the Commons*, 10(2), pp.709–727. DOI: <http://doi.org/10.18352/ijc.720>

ENSMINGER, J. and RUTTEN, A. (1991), the political economy of changing property rights: dismantling a pastoral commons. *American Ethnologist*, 18: 683-699. <https://doi.org/10.1525/ae.1991.18.4.02a00030>

Further Reading:

Vaccaro, Ismael. "Property Mosaic and State-making: Governmentality, Expropriation and Conservation in the Pyrenees." *Journal of Ecological Anthropology* 9, no. 1 (2005): 4-19.

James Scott. Chapter 7 Compulsory Villagization in Tanzania: Aesthetics and Miniaturization (pp. 223-261) in *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*. New Haven, Connecticut: Yale University Press.

Basupi, L.V.; Quinn, C.H.; Dougill, A.J. Pastoralism and Land Tenure Transformation in Sub-Saharan Africa: Conflicting Policies and Priorities in Ngamiland, Botswana. *Land* 2017, 6, 89.

Hannah, Matthew, 2000. Governmentality and the Mastery of Territory in Nineteenth-Century America. Cambridge University Press, Cambridge, UK. (1 chapter)

**TAKE HOME MIDTERM EXAM #2 POSTED ON FEB. 25, 2021**

**Week 9 – READING WEEK (March 2, 4)**

**TAKE HOME MIDTERM EXAM #2 DUE ON MARCH 4, 2021**

**Week 10 – Legal Pluralism (March 9, 11)**

Katherine Lemons. 2019. Chapter 1 - Regulating Kinship under Legal Pluralism. *In Divorcing Traditions* (Pgs. 3-34)

Lemons, K. (2018), Sharia Courts and Muslim Personal Law in India: Intersecting Legal Regimes. *Law & Society Rev*, 52: 603-629. <https://doi.org/10.1111/lasr.12351>

Further Reading:

Charles Benjamin. 2008. Legal Pluralism and Decentralization: Natural Resource Management in Mali, vol. 36(11): 2255-2276.

Günther Teubner, "The Two Faces of Janus: Rethinking Legal Pluralism," *Cardozo Law Review*, 13 (1992), 1443–1462.

M. Galanter, "Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law," *Journal of Legal Pluralism and Unofficial Law*, Vol. 19 (1981): 1–47.



S. Roberts, "Against Legal Pluralism. Some Reflections on the Contemporary Enlargement of the Legal Domain," *Journal of Legal Pluralism*, Vol. 42: 95–106.

### **Week 11 – International Law and Indigeneity (March 16, 18)**

Ronald Niezen . The origins of the International Movement of Indigenous Peoples. *In The Origins of Indigenism: human rights at the politics of identity* (Pgs. 29-52)

Ronald Niezen. 2010. The Invention of Indigenous Peoples. In *Public Justice and the Anthropology of Law*. (Pgs. 105-136).

Katja Gocke – Indigenous Peoples in International Law in *Adat In Indigeneity in Indonesia* (Pgs. 17-30)

Further Reading:

Achille Mbembe. 2006. The Banality of Power and the Aesthetics of Vulgarity in the Postcolony (pg. 381-400).

### **Week 12 – Human Rights and Relativism (March 23, 25)**

Michael J Perry 'Are Human Rights Universal? The Relativist Challenge and Related Matters' 19 *Human Rights Quarterly* (August 1997) 461-509.

Sally Engle Merry. 2006. Creating Human Rights *In Human Rights and Gender Violence: Translating International Law into Local Justice*. (approx. 30 Pgs)

James Rachels. The challenge of cultural relativism. (Pgs. 1-11).

Melville J. Herskovits 1947. "Statement on Human Rights." *American Anthropologist* 49(4):539–43.

Julian Steward. 1948. "Comments on the Statement of Human Rights." *American Anthropologist* 50(2):351–52.

Further reading:

Sally Engle Merry 2011. *Measuring the World: Indicators, Human Rights, and Global Governance*: with CA comment by John M. Conley

Abu-Lughod, L. (2002), Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and Its Others. *American Anthropologist*, 104: 783 - 790. <https://doi.org/10.1525/aa.2002.104.3.783>

Paul Farmer – Introduction to AIDS and Accusation

Paul Farmer – Introduction to Pathologies of Power.

Arthur Kleinman – Introduction to Social Suffering

### **Week 13 – Law and Gender (March 30, April 1)**

Sally Engle Merry 2006. Gender Violence and the CEDAW Process. In *Human Rights and Gender Violence: Translating international law into local justice* (pg. 72-102).

Monson, Rebecca. 2010. Women, State Law and Land in Peri-Urban Settlements on Guadalcanal, Solomon Islands. Justice for the Poor Briefing Note; volume 4, Issue No. 3. World Bank, Washington, DC. (Pgs. 1-6).

Mark Goodale Law and the Moral economy of Gender *In* *Law and Anthropology* (pgs. 163-183).

Further Reading:

Catherine Larouche & Katherine Lemons (2020) The narrowness of Muslim personal law: practices of legal harmonization in a Delhi family court, *The Journal of Legal Pluralism and Unofficial Law*, DOI: [10.1080/07329113.2020.1840770](https://doi.org/10.1080/07329113.2020.1840770)

Haraway, Donna. 1988. "Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective." *Feminist studies* 14 (3):575-599.

Merry et al. 2010. *Law From Below: Women's Human Rights and Social Movements in New York City*

### **Week 14 – Legal Process: Resolving Conflicts and Disputes (April 6, 8)**

Snyder, Francis G. "Anthropology, Dispute Processes and Law: A Critical Introduction." *British Journal of Law and Society* 8, no. 2 (1981): 141-80. Accessed December 12, 2020. doi:10.2307/1409719.

Simon Thomas, M., 2016. Theorizing Mediation: Lessons Learned from Legal Anthropology. *Utrecht Law Review* 12, (pgs. 50-60) doi:10.18352/ulr.325

Merry, Sally Engle. "Anthropology and the Study of Alternative Dispute Resolution." *Journal of Legal Education* 34, no. 2 (1984): (Pgs. 277-83). Accessed December 12, 2020. <http://www.jstor.org/stable/42892686>.

Further Reading:

Lemons, K. (2016), The Politics of Livability: Tutoring “Kinwork” in a New Delhi Women's Arbitration Center. *PoLAR*, 39: 244-260. <https://doi.org/10.1111/plar.12192>

Lara Nader – Coercive Harmony: the Political Economy of Legal Models (Pg. 1-13)

Bronislaw Malinowski. Primitive crime and its punishments *In Crime and Custom in Savage Society* (pg. 21-38)

Laura Zanotti (2015) Water and life: hydroelectric development and indigenous pathways to justice in the Brazilian Amazon, *Politics, Groups, and Identities*, 3:4, 666-672, DOI: [10.1080/21565503.2015.1080621](https://doi.org/10.1080/21565503.2015.1080621)

### **Week 15 – Doing Legal Ethnography (April 13, 15)**

Arzoo Osanloo. 2020. Forgiveness work: Mercy, Law, and Victims’ Rights in Iran. Chapter 7 - The Art of Forgiveness (Pgs. 212-240).

Scheper-Hughes, Nancy. "Parts Unknown: Undercover Ethnography of the Organs-trafficking Underworld." *Ethnography* 5, no. 1 (2004): 29-73. Accessed December 12, 2020. <http://www.jstor.org/stable/24047918>.

Sally Falk Moore, “Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study,” *Law & Society Review*, Vol. 7, No. 4 (Summer, 1973), (pgs. 719–746).

Further reading:

Ronald Niezen. 2010. The Imagined Order. *In Public Justice and Anthropology of Law*. (Pgs. 1-25)

Mark Goodale. Conclusion. Law in a Post-utopian world. *In The Anthropology of Law* (Pgs. 203-278).

Discipline and Practice: "The Field" as Site, Method, and Location in Anthropology  
Akhil Gupta and James Ferguson *In Anthropological Locations: Boundaries and Grounds of a Field Science* UCal Pres: Berkeley, LA, 1997 (Pgs. 1-46).

Philip Abrams. Notes on the difficulty of studying the state (Pp. 112-131).

Vaas and Poole (2004) State and its Margins: comparative ethnographies (Pgs. 3-33).

Bernard and Ryan 1997. Text Analysis: Qualitative and Quantitative Methods. Published in: *Handbook of Research Methods in Cultural Anthropology Qualitative Research* / Edited by H. Russell Bernard (Walnut Creek, CA: AltaMira Press, 1998), (p. 595-646).

**FINAL TAKE HOME EXAM – POSTED APRIL 19, DUE ON APRIL 26, 2021.**