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Commission
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International Union of Anthropological and Ethnological Sciences (IUAES)

Course at the University of Neuchâtel

“The Importance of Socio-legal Perspectives in Legal Studies: Building Capacities”

An International Course, organised by the Commission on Legal Pluralism in collaboration with the Commission Interface of the Swiss Society for Social Anthropology and hosted by the Anthropology Institute, University of Neuchâtel, Switzerland, August 26-29, 2009

Overview

Socio-legal research and the study of legal pluralism (the existence of plural normative orders) are indispensable to our understanding of how legal institutions can be improved to achieve social justice and to explore the possible merits and challenges of available alternatives. The academic study and teaching of law on the one hand has in many countries generally focused on legal theory and positive law, that is, the law in the books only. Much effort is invested in the study of new legislation, legal principles, international law and “advanced lessons” from Western legal systems. In much of this, the local picture from daily practice is often ignored or treated as being of secondary importance at best. As such there has been little attention to how law and different normative systems function in the every day lives of the poor and weak and how such functioning can be improved. Most law faculties concentrate on training lawyers for the profession and devote little time, if any, to the way in which law functions under conditions of legal pluralism in practice. This means that legal scholars who are interested in these find themselves isolated when it comes to teaching and research in this area. The academic study and teaching of social anthropology on the other hand rarely focuses explicitly on the ways of how different legal concepts such as international law, state law, religious law or customary law interact with other and what kind of reaction such interplay might institute. Rather, legal questions are either delegated to the law professionals or only discussed from the angle of customary law.

This four-day course will be held for academics and practitioners immediately before the XVIth International Congress of the Commission. The course aims at capacity building on the



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complex issues of legal pluralism by drawing on the expertise of international scholars in the field who attend the conference. It will provide a combination of practical and theoretical insights into some of the central questions and problems facing those concerned with all aspects of social cohesion in plural societies today. The course will enhance the capacity to develop the necessary legal anthropological techniques and skills to understand and reshape problems of legal pluralism. The purpose of the course is to familiarize the participants with current international debates and to offer them a comparative perspective that allows them to rethink their own research and practical work. At the centre of the discussion will be issues of rights protection, dispute management, gender, natural resources management, development, religion, and justice.

This will be the 8th International Course of the Commission, previous courses having been held in Wellington (New Zealand), Accra, Moscow, Arica (Chile), Chiang Mai (Thailand), Fredericton (Canada) and Bogor (Indonesia). It will make use of experience gained in these other courses. The teaching teams consist of senior academics drawn from the Commission. Here, as during the conference, both practitioners and academics of various backgrounds will be brought together. The course aims to provide participants with the opportunity of engaging in a sustained dialogue with like-minded scholars from a diverse, international background as well as access to networks that can help sustain individuals' ongoing research and teaching activities when they return to their home base.

The Course will be hosted by the Anthropology Institute of the University of Neuchâtel, Switzerland.

Topics

1. *Theoretical and methodological aspects of legal pluralism*

This session provides an introduction to theoretical and methodological aspects of legal pluralism, one of the most interesting and controversial concepts in the anthropology and sociology of law and legal theory. The session will sensitize the participants to the complexity of the coexistence of legal orders and the empirical and theoretical challenges it raises.



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2. *Dispute management*

The course introduces the legal anthropology of disputing in plural legal settings and draws attention to ongoing processes of disputing in a global or transnational environment.

3. *Law and religion*

This course section will address the changing arenas within which law and religion intersect and will explore how this entanglement affects plural legal configurations. It will explore the role of religion and religious law in the emergence of conflicts and its potential role in conflict management. The session will also discuss religion as a globalizing factor which has specific local manifestations.

4. *Natural resources management*

In most countries, the access-rules to natural resources as well as the corresponding rights of disposal are subject of different normative sets, which might influence each other or which might stay in a permanent competition for social recognition and public legitimacy.

5. *Field trip: (half-day)*

6. *Development*

This session provides insight into the legal mechanisms that are structuring the development political procedures for coping with human and natural disasters. These mechanisms, known under the term “project law”, largely determine the ways development agencies identify and administer those “problems” for which a specific solution is sought. In the countries of intervention however, these solutions might then clash with local customary law, religious law or the state law prevailing there.

7. *Gendered perspectives on law*

In this session attention will be paid to the gendered dimensions of law, its impact on women’s and men’s access to resources, including legal institutions. It will be discussed, how gender is socially and legally constructed and the consequences that this has for people’s access rights.



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8. *Justice and closing session*

Until now, the question of justice has been largely left to the political and legal philosophy of (the rule of) law and the state. Within the legal anthropological debate however, considerations on ethical questions such as justice play almost no role. This session opens the floor for a debate on “just law”.

Forms of Sessions

Generally morning sessions are planned to run from 9.00 to 12.30, with a half-hour break around 10.30 for coffee and other refreshments, and afternoon sessions from 14.00 pm to 17.00 with a half-hour break around 15.30.

The organisers have thought it best to ask instructors to decide how their sessions will be structured. Some may give both the presentations at the start, and devote the rest of the time to discussion. Some may have a discussion after each presentation. Some may propose specific questions for discussion. Some may divide the group into smaller groups for discussions, perhaps with everyone returning at the end for each group to report.

SESSION LEADERS, ORGANISERS AND DISCUSSANTS

Franz von Benda-Beckmann (Project Group Legal Pluralism, Max Planck Institute for Social Anthropology, Halle/Saale, Germany: fbenda@eth.mpg.de)

Keebet von Benda-Beckmann (Project Group Legal Pluralism, Max Planck Institute for Social Anthropology, Halle/Saale, Germany: kbenda@eth.mpg.de)

Susanne Brandtstädter (Department of Social Anthropology, University of Oslo; Norway: s.e.brandtstadter@sai.uio.no)

Anne Griffiths (School of Law, University of Edinburgh, Edinburgh, UK: anne.griffiths@ed.ac.uk)

Julie Stewart (Women’s Law Institute of Southern Africa, University of Zimbabwe, Harare, Zimbabwe: jstewart@pvtlaw.uz.zw)

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Bertram Turner (Project Group Legal Pluralism, Max Planck Institute for Social Anthropology, Halle/Saale, Germany: turner@eth.mpg.de)

Shalini Randeria (Department of Social and Cultural Anthropology, University of Zurich, Switzerland: randeria.shalini@gmail.com)

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Melanie Wiber (Department of Anthropology, University of New Brunswick, Fredericton, Canada: wiber@unb.ca)



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PROGRAMME

WEDNESDAY, 26 AUGUST, 2009

Introduction

09.00-09.30 Welcome, mutual introduction, short opening

Session 1: Theoretical and methodological aspects of legal pluralism

Franz von Benda-Beckmann

09.30-10.00 Introduction into the problems (F. von Benda-Beckmann)

10.00-11.00 Formation of four discussion groups and discussion. The discussions in the smaller groups c/should be focussed on some key issues

11.00-11.30 *Coffee-break*

11.30-12.30 Presentation and discussion of the specific issues focused on in the discussion groups

12.30-12.45 Conclusion and lead up to the next sessions

This session provides an introduction to theoretical and methodological aspects of legal pluralism, one of the most interesting and controversial concepts in the anthropology and sociology of law and legal theory. The session will sensitize the participants to the complexity of the co-existence of legal orders and the empirical and theoretical challenges it raises. One of the basic premises of legal pluralism is that the linkage between law and the state is not a constitutive element in the definition of law. State law thus becomes one variant besides other kinds of law such as (traditional or customary) ethnic or religious laws. This raises questions such as:



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- Is it necessary/desirable or not, and for which reasons, to tie “law” conceptually to a certain type of political organisation, that is “the state”?
- What kinds of “law” then do we deal with – in our specific research or action settings?
- How far does the conventional gap approach, that is, measuring the effectiveness of law by the extent to which people conform to the law and/or is sanctioned by decision making authorities, help us in plural legal conditions?
- What can it tell us, and what not, about the different ways in which legal rules and procedures have social consequences?

Literature

Basic text:

Benda-Beckmann, Keebet von. 2001. Legal pluralism. *Tai Culture* VI:11-17.

This paper provides a good overview over the main theoretical and methodological topics in the discussions about legal pluralism and of the domains of social organisation in which legal pluralism has been studied. Many of the relevant problems mentioned in the article will form the focus of the other sessions in the course.

Background readings:

Griffiths, Anne. 2002. "Legal pluralism," in *An introduction to law and social theory*. Edited by R. Banakar and M. Travers, pp. 289-310. Oregon: Hart Publishing.

Benda-Beckmann, Franz von. 2002. Who's afraid of legal pluralism? *Journal of Legal Pluralism* 47:37-82.

Earlier important writings on the issue:

Benda-Beckmann, Franz von. 1992. "Symbiosis of indigenous and Western law in Africa and Asia: An essay in legal pluralism," in *European expansion and law: The encounter of European and indigenous laws in 19th- and 20th-century Africa and Asia*. Edited by Wolfgang J. Mommsen and Jaap A. de Moor, pp. 307-325. Oxford, New York: Berg Publishers.

Benda-Beckmann, Franz von. 1997. "Citizens, strangers and indigenous peoples: Conceptual politics and legal pluralism," in *Natural resources, environment and legal pluralism. Yearbook Law & Anthropology 9*. Edited by Franz von Benda-Beckmann, Keebet von Benda-Beckmann, and André Hoekema, pp. 1-42. The Hague, Boston, London: Martinus Nijhoff Publishers.



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- Benda-Beckmann, Keebet von. 2001. "Transnational dimensions of legal pluralism," in *Begegnung und Konflikt – eine kulturanthropologische Bestandsaufnahme*. Edited by Wolfgang Fikentscher, pp. 33-48. München: Verlag der Bayerischen Akademie der Wissenschaften, C.H. Beck Verlag.
- Berghe, Pierre L. van den. 1973. "Pluralism," in *Handbook of social and cultural anthropology*. Edited by John J. Honigman, pp. 959-977. Chicago: McNally.
- Greenhouse, Carol J. 1998. Legal pluralism and cultural difference: What is the difference? A response to professor Woodman. *Journal of Legal Pluralism* 42:61-72.
- Griffiths, John. 1986. What is legal pluralism? *Journal of Legal Pluralism* 24:1-5.
- Hooker, M. Barry. 1975. *Legal pluralism: An introduction to colonial and neo-colonial laws*. Oxford: Clarendon Press.
- Merry, Sally E. 1988. Legal pluralism. *Law & Society Review* 22:869-896.
- Merry, Sally E. 1992. Anthropology, law, and transnational processes. *Annual Review of Anthropology* 21:357-379.
- Moore, Sally F. 1978. *Law as process: An anthropological approach*. London: Routledge and Kegan Paul.
- Nader, Laura, and Barbara Yngvesson. 1973. "On studying the ethnography of law and its consequences," in *Handbook of social and cultural anthropology*. Edited by John J. Honigman, pp. 883-921. Chicago: Rand McNally.
- Roberts, Simon A. 1998. Against legal pluralism: Some reflections on the contemporary enlargement of the legal domain. *Journal of Legal Pluralism* 42:95-106.
- Tamanaha, Brian Z. 1993. The folly of the 'social scientific' concept of legal pluralism. *Journal of Law & Society* 20:192-217.
- Tamanaha, Brian Z. 2000. A non-essentialist version of legal pluralism. *Journal of Law and Society* 27:296-321.



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Vanderlinden, Jacques. 1971. "Le pluralisme juridique: Essai de synthèse," in *Le pluralisme juridique*. Edited by John Gillissen, pp. 19-56. Brussels: Université Libre de Bruxelles.

Vanderlinden, Jacques. 1989. Return to legal pluralism: Twenty years later. *Journal of Legal Pluralism* 28:149-157.

Vanderlinden, Jacques. 1998. Villes africaines et pluralisme juridique. *Journal of Legal Pluralism* 42:245-274.

Woodman, Gordon R. 1998. Ideological combat and social observation: Recent debate about legal pluralism. *Journal of Legal Pluralism* 42:21-59.



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Session 2: Dispute management

Keebet von Benda-Beckmann

- 14.00-14.30 Introduction into the problems (K. von Benda-Beckmann)
- 14.30-15.30 Formation of four discussion groups and discussion. The discussions in the smaller groups c/should be focused on some key issues
- 15.30-16.00 *Coffee break*
- 16.00-17.00 Presentation and discussion of the specific issues focused on in the discussion groups
- 17.00-17.15 Conclusion and lead up to the next sessions

This part of the course will provide an introduction to the anthropology of disputing behaviour. Dispute management has been a core issue in the anthropology of law. Initially the study of disputes was used to explore the content of unwritten legal systems. Later on disputes have been studied within the wider social contexts. This course will discuss some of the basic insights from the study of disputes and provide some basic analytical tools to study disputing behaviour in plural legal settings. The sessions will discuss the process of disputing from the initial stage till the stage in which decisions are being implemented. We will follow the transformation processes to which disputes are being subject in the institutional settings in which they are being treated.

We will discuss the range of small scale disputes in local settings to disputing in global and transnational settings. The course will cover the full scope of potential ways of dispute management, ranging from the settlement of face to face quarrels or victim-perpetrator constellations to reconciliation processes in post-war societies and issues of restorative justice after transnational scenarios of mass violence.

Among the issues addressed in the course unit are:

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- Conflict and disputing: causes, clash of interests, deviance, social transgression, social dynamics, inequality
- Prevention and preventive law care
- Modes of dispute management: Avoidance, negotiation, mediation, arbitration, adjudication; ADR, neighbourhood justice; transitional justice
- Transformation of conflicts
- Choice of forum
- Implementation of decisions
- Social proximity and distance in disputing
- Disputes and social order

Literature

Basic text:

Benda-Beckmann, Keebet von. 2003. "The environments of disputes," in *The dynamics of power and the rule of law: Essays on Africa and beyond in honour of Emile Adriaan B. van Rouveroy van Nieuwaal*. Edited by Wim van Binsbergen, pp. 235-245. Leiden, Münster, Hamburg: LIT Verlag, African Studies Centre.

Background readings:

Felstiner, William L. F., Richard Abel, and Austin Sarat. 1981. The emergence and transformation of disputes: Naming, blaming, claiming ... *Law & Society Review* 15:631-654.

Engel, David. 2009. Landscapes of the law: Injury, remedy, and social change in Thailand. *Law & Society Review* 43:61-93.

Recommended Literature:

Benda-Beckmann, Franz von, and Keebet von Benda-Beckmann. Editors. 2006. *Dynamics of plural legal orders. Special double issue of the Journal of Legal Pluralism and Unofficial Law Nrs. 53-54/2006*. Berlin: Lit.

Benda-Beckmann, Keebet von. 1984. *The broken stairways to consensus: Village justice and state courts in Minangkabau. Verhandelingen van het Koninklijk Instituut voor Taal-, Land- en Volkenkunde. Vol. 106*. Dordrecht, Leiden, Cinnaminson: Foris Publications, KITLV Press.



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- Bohannon, Paul. 1965. The differing realms of the law. The ethnography of law. *American Anthropologist* 67:33-42.
- Comaroff, John L., and Simon A. Roberts. 1981. *Rules and processes: The cultural logic of dispute in an African context*. Chicago, London: University of Chicago Press.
- Galanter, Marc. 1974. Why the 'haves' come out ahead: Speculations on the limits of legal change. *Law & Society Review* 9:95-160.
- Galanter, Marc, and Jayanth K. Krishnan. 2004. 'Bread for the poor': Access to justice and the rights of the needy in India. *Hastings Law Journal* 55:789-834.
- Gluckman, Max. 1955. *The judicial process among the Barotse of Northern Rhodesia*. Manchester: Manchester University Press.
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- Goodale, Mark. Editor. 2009. *Human rights: An anthropological reader*. Oxford: Wiley-Blackwell.
- Griffiths, Anne. 1997. *In the shadow of marriage: Gender and justice in an African community*. Chicago, London: University of Chicago Press.
- Griffiths, Anne, and Randy F. Kandel. 2005. "Localizing the global: Rights of participation in the Scottish children's hearings system," in *Mobile people, mobile law. Expanding legal relations in a contracting world*. Edited by Franz von Benda-Beckmann, Keebet von Benda-Beckmann, and Anne Griffiths, pp. 277-295. Aldershot and Burlington: Ashgate.
- Griffiths, John. 1983. The general theory of litigation: A first step. *Zeitschrift für Rechtssoziologie* 2:145-201.
- Gulliver, Philip H. 1973. Negotiations as a mode of dispute settlement: Towards a general model. *Law & Society Review* 7:667-69.



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- Hoebel, Edward A. 1954. *The law of primitive man*. Cambridge: Harvard University Press.
- Malinowski, Bronisław. 1926. *Crime and custom in savage society*. London: Routledge.
- Mnookin, Robert M., and Lewis Kornhauser. 1979. Bargaining in the shadow of the law: The case of divorce. *Yale Law Journal* 88:950-997.
- Moore, Sally F. 1978. *Law as process: An anthropological approach*. London: Routledge and Kegan Paul.
- Moore, Sally F. 1986. *Social facts and fabrications: "Customary" law on Kilimanjaro 1880-1980*. Cambridge: Cambridge University Press.
- Moore, Sally F. 1998. The production of cultural pluralism as a process. *Public Culture* 1:26-48.
- Pospíšil, Leopold 1971. *Anthropology of law: A comparative perspective*. New York: Harper and Row.
- Pospíšil, Leopold. 1981. Modern and traditional administration of justice in New Guinea. *Journal of Legal Pluralism* 19:93-116.
- Richardson, Benjamin J., Shin Imai, and Kent McNeil. Editors. 2009. *Indigenous peoples and the law: Comparative and critical perspectives*. Oxford and Portland, Oregon: Hart.
- Rouveroy van Nieuwaal, Emile Adriaan B. van. 1998. "Law and protest in Africa: Resistance to legal innovation," in *Sovereignty, legitimacy, and power in West African societies: Perspectives from legal anthropology*. Edited by Werner Zips and Emile Adriaan B. van Rouveroy van Nieuwaal, pp. 70-119. Hamburg: Lit Verlag.
- Snyder, Francis G. 1980. Law and development in the light of dependency theory. *Law and Society Review* 14:723-804.
- Snyder, Francis G. 2005. "Governing economic globalization: Global legal pluralism and European Union law," in *Law and anthropology: A reader*. Edited by Sally F. Moore, pp. 313-329. Malden, MA: Blackwell Pub.



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- Velsen, Jaap van. 1967. "The extended-case method and situational analysis," in *The craft of social anthropology*. Edited by Arnold L. Epstein, pp. 129-149. London: Tavistock.
- Wiber, Melanie G. 1991. Levels of property rights, levels of law in Ibaloi (Philippine) society: Challenging oversimplification of non-Western property systems. *Man* 26:469-492.
- Wiber, Melanie G. 2005. "Mobile law and globalism: Epistemic communities versus community-based innovation in the fisheries sector," in *Mobile people, mobile law. Expanding legal relations in a contracting world*. Edited by Franz von Benda-Beckmann, Keebet von Benda-Beckmann, and Anne Griffiths, pp. 131-151. Aldershot and Burlington Ashgate.
- Wilson, Richard A. 2009. "Representing human rights violations: Social contexts and subjectivities," in *Human rights: An anthropological reader*. Edited by Mark Goodale, pp. 207-228. Oxford: Wiley-Blackwell.
- Zips, Werner. 1996. "Laws in competition: Traditional Maroon authorities within legal pluralism in Jamaica," in *The new relevance of traditional authorities to Africa's future (special issue of the Journal of Legal Pluralism, vol. 37-38)*. Edited by Emile Adriaan B. van Rouveroy van Nieuwaal and Donald I. Ray, pp. 279-306.
- Zips, Werner. 2005. "'Global fire': Repatriation and reparations from a Rastafari (re)migrant's perspective," in *Mobile people, mobile law. Expanding legal relations in a contracting world*. Edited by Franz von Benda-Beckmann, Keebet von Benda-Beckmann, and Anne Griffiths, pp. 69-89. Aldershot and Burlington: Ashgate.



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Session 3: Development

Markus Weilenmann and Shalini Randeria

This section addresses all those development political interventions which, directly or indirectly, always influence the existing legal relationships and change the conditions under which people might make use of their rights. In the focus are particularly all those projects or programmes which explicitly aim at the promotion of the rule of law, good governance or justice as well as for those which are subject to the conditionality. However, all development bureaucracies refer also to a whole series of models and techniques that are subject to a growing standardisation in order to achieve a more or less well defined progress. Thereby a particular kind of law, so-called „project law“, plays a significant role, since it structures the development political consulting process by normative viewpoints and intervenes in those socio-political contexts that are subject to any social change whatsoever. In the recipient countries project law might then clash with local customary law, religious law as well as with the state law prevailing there.

On the basis of several case studies, this session provides thus insight into the legal mechanisms that are structuring the development political procedures for coping with various development barriers.

09.00-09.15 Introduction to the course session (M. Weilenmann)

9.15 -10.00 Film: In the Wake of War.
Presentation and subsequent analysis of a development political crisis prevention project in Burundi

10.15-10.45 discussion

10.45-11.15 *Coffee break*

11.15-11.45 Transnationalisation of law through international organisations (World Bank, WTO); inspection panel of the World Bank and social movements (S. Randeria)



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11.45–12.15 Discussion, conclusions and lead up to the next session

Literature

Basic texts:

Weilenmann, M. 2009. Project Law – a Legal Intermediary between Local and Global Communities: A Case Study from Senegal, *Anthropologica* 51:39-51

Weilenmann, M. 2008. *To promote a justice of proximity in Rwanda. An evaluation report of RCNs programme activities carried out for the Rwanda-Office of the Réseau des Citoyens/Citizens Network (RCN Justice & Democracy). Bruxelles*

Further background readings

Benda-Beckmann, Franz von, 1989. 'Scapegoat and Magic Charm: Law in Development Theory and Practice', *Journal of Legal Pluralism*, 28, 129-48.

- 1993. Le monopol d'état de la violence dans la perspective de l'anthropologie juridique. In: E. Le Rois und T. von Trotha (Hg.) *La violence et l'état*. Paris: Harmattan, pp. 35-57.

Benda-Beckmann, Keebet von 2001. Transnational Dimensions of Legal Pluralism. In: W. Fikentscher (Hg.) *Begegnung und Konflikt. Eine kulturanthropologische Bestandsaufnahme*. München: Verlag der Bayerischen Akademie der Wissenschaften, Heft 120: 33-48.

- 2002. Globalisation and Legal Pluralism. In: *International Law/FORUM du droit international* 4: 19-25.

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Escobar, A. 1991. Anthropology and the Development Encounter. In: *American Ethnologist*, 18/4: 658-682.

Ferguson, J. 1994. *The Anti-Politics Machine. "Development," Depoliticisation, and Bureaucratic Power in Lesotho*, Minneapolis: University of Minnesota Press.

Gastel, I. N. van 2001. Governing 'Good Governance'. An analysis of the policy process from sociological and anthropological perspective. Thesis. Wageningen University, Faculty of 'Development Sociology' and 'Law and Governance', Wageningen.



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Giddens, A. 1984. *The Constitution of Society. Outline of the theory of structuration*. Cambridge: Polity Press.

Grillo, R. D. und R. L. Stirrat 1997. *Discourses of Development. Anthropological perspectives*. Oxford/New York: Berg.

Günther, K. und S. Randeria 2001. *Recht, Kultur und Gesellschaft im Prozess der Globalisierung*. Schriftenreihe Suchprozesse für innovative Fragestellungen in der Wissenschaft Nr. 4. Bad Homburg: Programmbeirat der Werner Reimers Konferenzen.

Hyden, G. 1983. *No Short Cuts to Progress. African development management in perspective*. London: Heinemann-Verlag

Randeria, S. 2005. 'Mutual Complicity and Project Law in Development Cooperation', *Entwicklungsethnologie*, **14**, 1+2, pp 149-157

Shore, C. und S. Wright 1997. Introduction. Policy: a new field of anthropology. In: C. Shore und S. Wright (eds.) *Anthropology of Policy. Critical perspectives on governance and power*. London and New York: Routledge. pp. 3-39

Spittler, G. 1981. Die Struktur der Bürokratie in afrikanischen Agrargesellschaften und die Agrarpolitik. In: R. Hanisch und R. Tetzlaff (Hrsg.) *Staat und Entwicklung. Studien zum Verhältnis von Herrschaft und Gesellschaft in Entwicklungsländern*. Frankfurt am Main/New York: Campus, pp. 297-318

- 1983. Passivität statt sozialer Bewegung. Familiäre Subsistenzwirtschaft als Basis für defensive Strategien der Bauern und Passivität der Verwaltung. In: R. Hanisch (Hg.) *Soziale Bewegungen in Entwicklungsländern*. München: Campus pp. 45-73

Thomson, J. T. 1987. Land and tree issues in three francophone Sahelian Countries: Niger, Mali and Burkina Faso. In: J. B. Raintree (Hg.) *Land, Trees and Tenure*. Nairobi; Madison: International Council for Research in Agroforestry (ICRAF) and Land Tenure Centre. pp. 3-40

Tilly, C. 1986. War Making and State Making as Organized Crime. In: P. B. Evans, D. Rueschemeyer und Th. Skocpol (eds.) *Bringing the State Back In*. Cambridge, Cambridge University Press, pp. 169-191.

Trotha, T. von 1988. Zur Entstehung von Recht. Deutsche Kolonialherrschaft und Recht im 'Schutzgebiet Togo' 1884-1914. In: *Rechtshistorisches Journal* 7: 317-347.



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- 1994. *Koloniale Herrschaft. Zur soziologischen Theorie der Staatsentstehung am Beispiel des 'Schutzgebietes Togo'*. Tübingen: J. C. B. Mohr (Paul Siebeck).

Further recommendation:
www.conflictresearch.ch



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Session 4: Natural resources management

Melanie G. Wiber

- 14.00-14.30 Introduction to the session (M. G. Wiber)
- 14.30-15.30 Film: Sharing the Waters (DVD)
- 15.30-16.00 *Coffee break*
- 16.00-17.00 Mock stakeholder meeting
- 17.00-17.15 Discussion and lead up to next session

This section of the course will address the problem of multiple rules of access to natural resources, each access right springing from a different level or type of law (aboriginal, national, international). Although legal pluralism in natural resource regulation is often viewed as a consequence of the imposition of colonial law, and the resulting problems most prevalent in non-Western post-colonial nation states, this section of the course will draw on case material from Canada. Students will have the opportunity to participate in mock stakeholder negotiations over access to and use of marine waters. The exercise will allow participants to address the following questions:

- What principles or values should underlie access to natural resources? Economic efficiency? Equity? Sustainability? Historical precedence?
- What role should local communities play in managing adjacent resources?
- Where conflicting claims to the same resources are supported by alternative legal conceptions and principles, how can these be adjudicated? Through the court system? Political negotiation? Independent arbitration?
- Can the concept of integrated management address some of the problems of jurisdictional overlap and legal conflict that underlie many resource problems?



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Literature

Basic texts:

Wiber, Melanie G., and Julia Kennedy. 2001. Impossible dreams: Reforming fisheries management in the Canadian Maritimes after the Marshall decision. *Law and Anthropology* 11:282-297.

Wiber, Melanie G., and Maria Recchia. 2009. "Calling for integrated management of Saint John Harbour. Proceedings of the 8th Bay of Fundy Ecological Partnership Science Workshop," Acadia University, Wolfville, N.S., May 26-29.

Wiber, Melanie G. 2005. "Mobile law and globalism: Epistemic communities versus community-based innovation in the fisheries sector," in *Mobile people, mobile law. Expanding legal relations in a contracting world*. Edited by Franz von Benda-Beckmann, Keebet von Benda-Beckmann, and Anne Griffiths, pp. 131-151. Aldershot and Burlington: Ashgate.

Background readings:

Students are encouraged to examine several international conventions that are relevant to the case study area, including:

United Nations Convention on Biological Diversity 2000 (see <http://www.cbd.int/convention/convention.shtml>)

United Nations Convention on the Law of the Sea (see http://www.un.org/Depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm)
Especially Art. 22, Art. 41 and all of Section 3.

United Nations International Maritime Organization (IMO) Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs) (see <http://www.imo.org/>).
Especially Rule 10, regulations concerning traffic separation schemes.

A quick look at the Port Reform Toolkit (see <http://www.ppiaf.org/documents/toolkits/Portoolkit/Toolkit/index.html>) will also give students some background on the complexities of port management.



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FRIDAY, 28 AUGUST, 2009

Session 5: Law and religion

Bertram Turner

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- 09.00-09.30 Introduction to the course session (B. Turner)
- 9.30-10.30 Formation of four discussion groups each of which will deal with one of the four main fields
- 10.30-11.00 *Coffee break*
- 11.00-12.00 Presentation and discussion of the remarks and comments the four discussion groups have worked out on the main fields
- 12.00-12.15 Conclusion and lead up to the next session

This course section will address the changing arenas within which law and religion intersect and will explore how this entanglement affects plural legal configurations. Many of the issues involved such as the role of religion and religious law in the emergence of conflict and its potential contribution to the management of conflict, the transfer of normative effects of religion through migration flows, the attempts by states either to give effect to religious law or to suppress it, are far from being new. However, these issues have become increasingly important with respect to normative ordering and the social working of law in the context of ongoing processes of globalization and transnationalization. Furthermore, the central differentiation between the role of religion and the role of religious law will be discussed in the course emphasizing the various dimensions of their encounter with other normative registers.

The introduction to the session will address some of the main fields of legal religious entanglements such as:

- Transnational religious activism, religious movements and faith-based organizations
- Migration and transnational mobility (incl. cultural diversity)



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- Development cooperation and global economy (incl. natural resources)
- Disputing and conflict (family law, human rights, reconciliation councils and restorative justice)

These main fields will be further discussed on the basis of the course reading. In order to do so the course will be divided up in smaller groups. The results will be afterwards presented to the plenary. The concluding discussion will include the question how these various fields are related to each other.

Literature

Basic text:

Turner, Bertram, and Thomas G. Kirsch. 2009. "Law and religion in permutation of order: An introduction," in *Permutations of order. Religion and law as contested sovereignties*. Edited by Thomas G. Kirsch and Bertram Turner, pp. 1-24. Farnham and Burlington: Ashgate.

Background readings:

Bowen, John R. 2005. "The place of religions in modern nations and states," in *Religions in practice. An approach to the anthropology of religion*. Edited by John R. Bowen, pp. 249-270. Boston, New York, San Francisco et al.: Pearson Education.

Hadley, Michael L. 2006. "Spiritual foundation of restorative justice," in *Handbook of restorative justice*. Edited by Dennix Sullivan and Larry Tiftt, pp. 174-187. London et al.: Routledge.

Further recommendations:

Barzilai, Gad. Editor. 2007. *Law and religion*. Aldershot: Ashgate.

Berman, Harold J. 1993. *Faith and order: The reconciliation of law and religion*. Atlanta: The Scholars Press.

Berman, Harold J. 2005. "Faith and law in a multicultural world," in *Religion in global civil society*. Edited by Mark Juergensmeyer, pp. 69-89. Oxford: Oxford University Press.

Clarke, Peter B. Editor. 2009. *The Oxford handbook of the sociology of religion*. Oxford: Oxford University Press.



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Especially Chapters 8-10, 18, 21-28, 35, 45, 49.

Coffey, Joseph I., and Charles Matthews. Editors. 2002. *Religion, law, and the role of force: A study of their influence on conflict and on conflict resolution*. Ardsley, NY: Transnational Publications.

Day, Abby. Editor. 2008. *Religion and the individual: Belief, practice, identity*. Aldershot: Ashgate.

Eisenstadt, Shmuel. 2007. "The resurgence of religious movements in processes of globalization – beyond the end of history or the clash of civilizations," in *Democracy and human rights in multicultural societies*. Edited by Matthias Koenig and Paul de Guchteneire, pp. 239-250. Aldershot: Ashgate.

Esposito, John L., and Michael Watson. Editors. 2000. *Religion and global order*. Cardiff: University of Wales Press.

Hadley, Michael. Editor. 2001. *The spiritual roots of restorative justice*. New York: New York University Press.

Herbert, David. 2003. *Religion and civil society. Rethinking public religion in the contemporary world*. Aldershot: Ashgate.

Juergensmeyer, Mark. Editor. 2005. *Religion in global civil society*. Oxford: Oxford University Press.

Lucas, Phillip C., and Thomas Robbins. Editors. 2004. *New religious movements in the twenty-first century: Legal, political, and social challenges in a global perspective*. New York: Routledge.

Mehdi, Rubya, Hanne Petersen, Erik Reenberg Sand, and Gordon R. Woodman. Editors. 2008. *Law and religion in multicultural societies*. Copenhagen: DJØF Publishing.

Tyndale, Wendy R. Editor. 2006. *Visions of development: Faith-based initiatives*. Aldershot: Ashgate.

Woodman, Gordon R. 2007. "The possibilities of co-existence of religious laws with other laws," in *Law and religion in multicultural societies*. Edited by Rubya Mehdi, Hanne



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Petersen, Erik Reenberg Sand, and Gordon R. Woodman, pp. 7-22. Copenhagen:
DJØF Publishing.

Session 6: Field trip (in the afternoon)

Visit of the Durrenmatt Museum in Neuchâtel



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SATURDAY, 29 AUGUST, 2009

Session 7: Gendered perspectives on law

Anne Griffiths and Julie Stewart

- 09.00-09.30 Introduction to the course session (A. Griffiths and J. Stewart)
- 9.30-10.30 Formation of small groups to explore sex and gender perspectives in the construction of the social identities of women and men. (An exercise will be provided.*)
- 10.30-11.00 *Coffee break*
- 11.00-12.00 The group as a whole will explore connections between gendered social dynamics and law through a discussion on the set readings.
- 12.00-13.00 Participants will apply a gendered approach to legal pluralism to a topic of their choice

***Exercise:**

SEX AND GENDER ANALYSIS - BASED ON YOUR OWN PERSONAL EXPERIENTIAL DATA

In doing the exercise you will need to cast your mind back to your childhood, adolescence, or to your own family or community based experiences. You might, also, find that you can recollect the experiential data from your own experience as a parent/grandparent.

- 1 (a) Are there games or toys that perceived as more appropriate for young boys than for young girls? Can young girls participate in these games or play with such toys? Repeat the exercise for small girls and for boys' participation in those games and playing with such toys?
- (b) Are there traditional tales, 'fairy' stories, legends, books, drawings that depict males and females differently and emphasise male/female characteristics? If so what are these and how are males and females differently portrayed?



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- 2 (a) Are there chores or tasks, around the home or in relation to family farming or other activities that are regarded as being appropriate for male or female family members regardless of age? Briefly describe them.
- (b) Are there occupations and income related activities that indicate gendered preferences or assignments.
- 3 (a) Are there cultural and social activities, sports that are reserved or preferred for adolescent males? Can adolescent females participate in these activities? Repeat the exercise for adolescent females and also for adolescent boys' participation in those games?
- (b) Are there restrictions on the social activities of male adolescents and female adolescents and if so what are they? What, if any, reasons are given for these restrictions?
- 4 (a) Are there media materials (where appropriate including TV, radio etc, movies, magazines) that depict males and females differently and emphasise male/female characteristics? If so what are these and how are males and females differently portrayed?
- (b) Do males and females dress and groom themselves differently in the situations indicated below and if so how:
Boardroom meeting
Appearing in court as a legal representative
Wedding

The course as a whole focuses on the importance of socio-legal perspectives in legal studies and on the study of legal pluralism as a means of advancing our understanding of how legal institutions can be improved to achieve social justice. This session explores the gendered dimensions of law and its impact on women's and men's access to and utilization of legal institutions. It examines how gender is socially and legally constructed and the consequences that this has for people's, especially women's, use of legal rights.

This session aims to examine:

- How sex and gender underpin the construction of everyday social life
- The impact that this has on the private and public dimensions of the world in which women and men operate, e.g. family, workplace, income, generating activities etc.

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- The ways in which the gendered dimensions of social life are integrated into law in its multiple forms – in both weak and strong legal pluralism, and at multiple levels – local, national and transnational
- The potential problems and conflicts that such integration may create in terms of law and policy formulation/implementation
- The effect of the above on power and how it manifests itself in male/female relationships, including access to resources and law and legal rights, and
- The importance of factoring gender analysis into policy making, law and legal pluralism.

Literature

Basic texts:

Stewart, Ann 2000. "The contribution of feminist legal scholarship to the 'rights approach to development'," in *Law in its social setting: Gender, law and social justice*. Edited by Ann Stewart, pp. 3-18. London: Blackstone.

Stewart, Julie, and Amy Tsanga. 2007. "The widows and female child's portion: The twisted path to partial equality for widows and daughters under customary law in Zimbabwe," in *Human rights, plural legalities and gendered realities: Paths are made by walking*. Edited by Anne Hellum, Julie Stewart, Shaheen Sardar Ali, and Amy Tsanga, pp. 407-436. Harare: Weaver Press.

Griffiths, Anne 2007. "Making gender visible in law: Kwena women's access to power and resources," in *Human rights, plural legalities and gendered realities: Paths are made by walking*. Edited by Anne Hellum, Julie Stewart, Shaheen Sardar Ali, and Amy Tsanga, pp. 139-163. Harare: Weaver Press.

Background readings:

These are short readings so there are three of these that serve as background to the session and discussions.

El-Bushra, Judy 2000. "Rethinking gender and development practice for the twenty-first century," in *Gender in the twenty-first century*. Edited by Caroline Sweetman. London: Oxfam.

Sardar Ali, Shaheen 2007. "Interpretative strategies for women's human rights in a plural legal framework: Exploring judicial and state responses to Hudood laws in Pakistan,"



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in *Human rights, plural legalities and gendered realities: Paths are made by walking*.
Edited by Anne Hellum, Julie Stewart, Shaheen Sadar Ali, and Amy Tsanga. Harare:
Weaver Press.

Rao, Aruna, and David Kelleher. 2005. "Is there life after gender mainstreaming?," in
Mainstreaming gender in development: A critical review. Edited by Fenella Porter and
Caroline Sweetman, pp. 57-69. Oxford: Oxfam.



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Session 8: Justice

Susanne Brandtstädter

- 14.00-14.30 Introduction to the session (S. Brandtstädter)
- 14.30-15.30 Exploration of the problem of justice by focussing on the readings. This will involve a joint definition of key issues, group work, collective presentations, and a general discussion
- 15.30-16.00 *Coffee break*
- 16.00-17.15 Group work, collective presentations, general discussion, and lead up to next session

This session proposes to explore justice as a social process and political commitment that emerges in the “gap” between law and common morality, between promises of citizenship and experienced inequality and violence. The readings help us to problematize the often assumed equivalence between justice and the “rule of law” (where obtaining justice is seen mostly as a question of “access”), and thereby also to problematize prevalent explanations for certain types of “uncivil” and/or “illegal” actions (e.g., “traditional culture”). The session will present justice as a “semiautonomous” discourse and social field (Moore), formed in interaction with those of law, morality, and citizenship. It provides insight into situations where justice might be sought by recourse to illegal means, where “the rule of law” does not redress inequalities of citizenship and elides the everyday violence experienced by those at the margins of “civil society”. The discussion will focus on questions such as

- How should justice be defined and on what kind of justice can the “rule of law” be based? How does that link to the (often politicised) issue of a common morality?
- How do we account for (cultural, economic, political) inequality under the “rule of law”, based on an assumption of citizen equality? Does justice provide a field where differences of experience, elided under the “rule of law”, can manifest themselves?
- Can justice be a more promising concept than “common morality” or “common values” to achieve social integration? Or is the demand for justice, in contrast, intrinsically adversarial to “order”? In how far is “the rule of law” dependent on social integration?
- In what way is citizenship, as a historical concept and a particular experience, reflected in the boundaries between justice, law, and illegal action? How can this



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affect our understanding of “local communities”, “community values”, and “popular justice”?

Literature

Basic texts:

Goldstein, Daniel M. 2003. 'In our own hands': Lynching, justice, and the law in Bolivia. *American Ethnologist* 30(1):22-43.

Sundar, Nandini. 2004. Towards an anthropology of culpability. *American Ethnologist* 31(2):145-163.

Background reading:

Ewick, Patricia. 1998. "Punishment, power and justice," in *Justice and power in sociolegal studies*. Edited by Bryant G. Garth and Austin Sarat, pp. 36-54. Evanston, IL: Northwestern University Press.



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