

49. Minority Rights, Culture, and Anthropology

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What is the place of social anthropology in the field of anti-discrimination law and minority rights? Such concepts as culture, tradition, ethnicity, nation or race are core concepts of anthropological thinking and analysis. Simultaneously, they play an important role in international legislation on human rights, especially when lawyers deal with minority right issues. Thus, jurisprudence may legally entitle peoples to their cultures or may deny them the corresponding rights. As the concepts used in the courtrooms are never of a neutral origin, social anthropologists are increasingly paying attention to the problems related to "struggles over cultural rights". How can anthropology help us to engage and rethink the powerful of frameworks of human rights and to take the concept of equality seriously, as well as reconsidering its own core analytical constructs in the process? Until 29 July 2003 all EU member states should have adopted a new EU anti-discrimination directive ("race-directive") into their national legislations. While most of the states certainly had tried hard to meet the requirements in time, a great number of them still failed. The arguments used by state representatives and NGO-activists reveal a lot about European societies, as both old and new EU members make a rather tactical use of the transposition. The workshop aims to take the "race-directive" and recent case law produced by the European Court of Human Rights as an empirical basis for conceptual and theoretical discussions. We encourage potential contributors to submit paper proposals (no longer than 250 words), tackling with questions of minority rights, anti-racism, and anti-discrimination and initiating an in-depth debate on the use of the above mentioned "core concepts" of anthropology and their possible consequences as they relate to the field of human rights and its practice today in the world and in particular in Europe.

Immigrant Transnational Legal Spaces: Citizenship, Family Code and Cultural Justice

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This paper aims to focus on the consequences of citizenship-based application of Family Law in (im)migrant court cases mainly in Germany. The focus of the paper is on the impact of International Private Law on the institutionalization of (im)migrants' transnational legal spaces in Europe. The impact of anthropologists and particular notions of culture have been explored mostly in relation to the question of cultural defense vis-a-vis immigrants within the frame of Criminal law. However,

their impact in the application of Family Code remains mostly unexplored. According to the the new Race Directive accepted in July 2003, indirect discrimination occurs "where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary". The main concern of the paper is to raise questions about the disadvantages that might be set free by the new Race Directive. Based on empirical material dealing with court cases of divorce, this paper argues that the apparently neutral and culturally just selection of Family Code on the basis of citizenship criterion might end of creating disadvantages for the immigrants in Germany.

Anti-Discrimination and Discourse about Migrants in Europe

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Any legal formulation to protect the rights of minority populations living in Europe will be based on the feelings, stereotypes, values and assumptions regarding them, held and propagated by the majority, in this case, central Europe. When these feelings, stereotypes, values and assumptions are negative, then the picture of the "other", in this case the "migrant" is negative. The reason that many central European governments are currently ratifying stringent and inhuman legal steps against the migrants lies fundamentally in these „negative“ images of the South. This is a phenomenon that is rooted in the conceptions of western, colonial anthropologists as to the wild, exotic and underdeveloped South leading to drastic effects on the migrant population. When one wishes to discuss minority issues, the identity and cultural roots, identity and self-understanding of majority, privileged groups needs to be examined and dissected. Currently, however, there is an on-going production and propagation of negative images regarding the South being weak, violent or chaotic and a threat to the north. My aim is to analyse the knowledge producing structures in the North responsible for these images about the South and to examine the power dynamics behind them. Using qualitative analytical techniques of Grounded Theory, the paper develops new theoretical concepts around the issue of identity, culture and remnants of colonial thinking and action based on recent interviews with thirty-nine "educator-activists" in India and Germany. Based on the results of this analysis, the paper examines a process of *Southernism* through which images of the South/the Migrant and "myths" around them are constructed and systematically propagated in the North. Wherever necessary, connections are made to important texts from the writings of southern post-colonial and post-development thinkers like Edward Said, Samir Amin and Arturo Escobar. The paper attempts to show how such images affect the legal stringencies against migrants in Europe and present alternative theoretical and practical ideas.

Old and New Anthropological Concepts in Normative Minority Rights Literature and Nongovernmental Organizations' Practice

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Over the last ten-fifteen years, normative political philosophers have been developing numerous models in order to deal with issues of multiculturalism and minority rights. While the discourse of cultural pluralism abounds in concepts like 'identity',

'nationhood', 'culture', 'tradition' or 'civil society', anthropology has taken up the task to deconstruct them and contends that such "categories of practice" are no longer, if ever, viable "categories of analysis". Firstly, the paper identifies the new "turn" in anthropological analysis with a focus on Roma topics: 1. The not always successful demise of the epistemologically inaccurate premises of the "old" concepts, such as the homogeneity of particular peoples, and the discreteness of boundary-maintaining cultural systems. 2. And the advancement of an understanding of human agency that is not explained by the individual's sharing in the values of a certain cultural system, but in terms of situatedness and means of relating to the context. Secondly, it shows that most of the minority rights literature relies heavily on the "old", pernicious conception of culture. And thirdly, it analyzes the collaboration between two non-governmental organizations in Romania, Romani CRISS and Academia Catavencu, whose extremely varied actions revolve around 'Roma issues' and which, I argue, manage to overcome in practice the inflexibility the normative literature of multiculturalism ends up professing.

Reinforcing Boundaries: The Future of the Roma in Romania's Transition to the European Union

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The future status of the Roma is questionable as Romania implements reform programs to prepare for accession to the European Union in 2007. Romania's Reform Agenda calls for legislation to criminalize racism and discrimination, however, the enforcement of such legislation is lacking due to institutionalized systems of racial hierarchy, corrupt nationalist agendas, and unequal distribution of resources. I draw on concepts of *nationality*, *community*, and *class-consciousness* to examine the perceived socio-economic boundaries within the Roma population to expand the theoretical discourse on external pressures that reinforce the internal dynamics of marginalized populations. In relation to these concepts, minority rights legislation is contradictory in that the same directives that seek to protect Roma cultures concurrently deny them equal access to the competitive market system, jobs, education, and other human rights through institutionalized discrimination. The consequences of these contradictions are problematic for anthropologists who must take into account the changing frameworks surrounding the critical analyses of social reform in post-communist Europe in light of the European Union's eastern enlargement. Since the 1989 revolutions, discourses have developed among anthropologists regarding how the intersectionality of race and socio-economics contribute to the changing internal dynamics of marginalized populations in Central and Eastern Europe. By exemplifying the situation of the Roma in Romania, I argue that the European Union anti-discrimination directive necessitates a critical reconsideration by social scientists of the concepts of nationality, community, and class-consciousness in marginalized populations and their relationships with powerful new legislative initiatives.

The Census as an Element of Ethnic Discourse in Poland

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Political changes after 1989 have had a fundamental influence on the situation of national and ethnic minorities in Poland. The adopted legal regulations guarantee

minority members the possibility to freely articulate their national and ethnic identity, and a right to public activities. Yet the ethnic discourse is still characterised by intense dynamics. In recent years the National Census of 2002 has become an important element of the discourse - for the first time in the post war period the question of national identity of citizens was posed. The census results revealed a different picture of national and ethnic diversity from the estimates (provided by the minorities themselves and different national institutions) as to the quantity, character and number of minorities. Besides, the discrepancy between the estimates and the census data is significant. The fact has become an important theme in the public discussion of the multicultural character of Polish society from the point of view of both minorities and ethnic researchers. The description formula always organises the identity discourse specifically because it arranges the delicate and complex matter of identity into categories which can be processed statistically. However, statistics can be perceived as an element of political technology which mobilises, in a specific way, some configurations of knowledge and power. Therefore, it is important to show the essence of identity rhetoric included in the descriptive questions and the vision of social reality hidden behind it (here in the ethnic dimension) as created by state agencies. The statistical classifications not only serve the purpose of describing social reality but also influence the way people think of themselves and which actions of those available to them choose. This paper will, therefore, show the results of the meeting of such categorical statistical description with self-description on the example of identity dilemmas which were encountered by members of some ethnic and national minorities in Poland.

Are Language Rights Human Rights?

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Are language rights human rights? And if so, what do these rights include? How far do they extend? On what terms do we justify them – according to the number of speakers? Citizenship status? Degree of endangerment of the language? The forecasts linguists are making of a spectacular loss of language diversity worldwide in the century to come, together with an upsurge in language revival movements have certainly put language rights and the broader cultural value of linguistic diversity on the table. In the last decade we have seen some international efforts to address the matter: the European Charter for Regional or Minority Languages in 1992, and in 1996 the World Conference on Linguistic Rights held in Barcelona approved the Universal Declaration of Linguistic Rights with the aim of bringing this before the United Nations. In this paper, I will explore these policy initiatives as well as recent debates among linguistic anthropologists over how to conceptualize language rights. One of my goals is to consider how applicable the formulations of linguistic anthropologists -- which have emerged largely from consideration of endangered indigenous languages – are to the European context. What might be the advantage of a greater dialogue with European language struggles? As a case in point, I will take recent events in the Basque Autonomous Community of Spain to explore in greater detail how language rights are tied to issues of political dissent and freedom of expression, all of which are now at greater risk in the post 9/11 era.

Indigenous law as State Law - Recent Trends in Latin American Legal Pluralism

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Since the 1980s the growth of ethnic movements among Latin America's indigenous population and shifts in the politics of international organizations, such as the United Nations, the World Bank or the International Monetary Fund have facilitated changes in the attitudes of Latin American governments towards the indigenous population in general and the existing legal pluralism in particular. In a number of countries constitutions were reformed to acknowledge the multicultural character of the nation and to recognize the indigenous legal practices (*usos y costumbres*) as valid. This poses a number of practical and theoretical problems related to fundamental questions of social anthropology such as the reification of culture and tradition by both, international organizations and Latin American governments on the one hand and, indigenous people and organizations, on the other hand. The paper will first give a brief overview of recent changes in the constitutions and legislation of Latin American countries related to legal pluralism and then discuss some important issues related to these processes, for example, the definition and implementation of indigenous law and the problems which result from this. It will further address some of the consequences these recent changes have had in indigenous regions, especially with regard to conflict resolution, the election of authorities, and the role of political parties.

Israeli Anthropology and Apartheid: Intellectual Property, Mizrahi Politics, and the Right of Return

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The modern state of Israel declares itself to be the homeland of a citizenry consisting of three major groups: A bit less than 30% of Israelis are Ashkenazim, Jews originating in Central and Eastern Europe. 20% are Palestinians with Israeli citizenship, and the majority of over 50% is Mizrahim (Orientals, Heb.), Jews who immigrated to Israel mainly from the Arab World. So if one is to add up the Mizrahim with the Palestinian-Israelis, the majority of Israeli citizens is of Arab descent. Yet it is the Ashkenazi minority's domination and hegemony that has led to the disenfranchisement of this Arab demographic majority as an ethnic-cultural-national minority. As for Israeli Anthropology - all but one tenured faculty are upper class Ashkenazim, yet 67% of Israeli Anthropologists make their living out of the study of Mizrahim and Palestinians. The Israeli Anthropological Association has neither a code of ethics nor any other "human subjects" procedures. Mizrahi and Palestinian dispossession has habitually provided the raw materials that led to the proliferation of Ashkenazi scholarly articles and books. Nevertheless, this Anthropology depended on the innocent cooperation of Mizrahi and Palestinian "informants" stripped out of their intellectual property rights to their traditions and cultures. Instead, Mizrahim and Palestinians were inscribed as texts of picturesque Jewish "immigrant" or Arab "indigenous" border villagers, primitive ultra-orthodox inner city ghetto sages, or landless noble Abrahamian nomads. In a further dislocation, Mizrahi or Palestinian intellectual textualized discourse of resistance authored in Hebrew or Arabic was rarely quoted in Israeli anthropological texts. Rather, stripped of authorship, this discourse was often used as further raw "field" data to be explicated through English-written theories authored by Western, pro-Israeli ivy-leagued anthropologists who, in turn, might be used as tools to promote Israeli anthropological careers. My paper examines the inter-relationship between the homogeneous makeup of Israeli Anthropologists and the manners in which Israeli Anthropology has muffled Mizrahi and Palestinian claims to Arab culture. It does so through the cross cultural analysis of

the moment in the history of feminist theory of color when it critiqued the dispossession of women of color's theories as ethnographies that were yet to be theorized by white feminists. The paper also explores the possible reasons why Mizrahi and Palestinian activists have not utilized the legal course and sued for the return of their intellectual property rights like other minorities, such as Native Americans.

