

## 9. At the Heart of (Every?) Society? Reintegrating Legal Anthropology into Social Anthropology

*Convenors:*

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Law is considered by lawyers and sociologists to be at the very center of social integration in Western societies, whereas social anthropological discourses regard law as marginal in Non-Western societies. The proposed workshop seeks to challenge both the marginalization of legal arrangements and discourses in social anthropology as well as the marginalization of legal anthropology within social anthropology. Anthropology of law has much too long remained a stepchild in anthropology, associated with a nearly exclusive focus on processes of disputing and struggles over the definition of law, especially in British social anthropology. The recent years, however, have witnessed a revival, especially in German speaking countries, The Netherlands and Scandinavia of a legal anthropology that addresses issues that are at the forefront of anthropological research today and touch core issues of the general theme of the EASA conference 2004. The organizers invite papers to address one or more of the above topics, which should contribute to a (re)integration of the anthropology of law into the mainstream of social anthropology and relate to the following themes.

a.) legal pluralism as an outcome of social diversity, b.) globalisation processes often opposed by new forms of transnational civil society and (proto-)legal networks, c.) multiple identities and multiculturalism embedded in complex multi-sited legal frameworks, d.) human rights issues where social conflicts and confrontations are negotiated (often reflecting emergent and/or established hierarchies), e.) the political economy of natural resource rights where distance and proximity appear to be interlocked, therefore making peaceful solutions more difficult.

Dejuridification and the legal status of World Bank and IMF “loan arrangements”:  
The institutional reforms in Malawi

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The Bretton Woods institutions have consistently denied that the conditions of their reform programmes constitute legally binding agreements. Instead they point out that their reform programmes merely respond to the policy objectives of governments receiving support. According to the Bank and the Fund it is the government that “owns” the reforms. Yet the concept of “ownership” is paradoxical, considering the fact that borrowing governments *do* have to meet certain conditions to qualify for further financial assistance, the infamous “conditionality”. To avoid the impression of interference into the affairs of a sovereign state conditionality is presented as expressing merely the intent of the government. Hence, the loan documents constitute arrangements and not agreements according to the Bank and the Fund. A detailed analysis of a set of related documents on good governance reforms and the civil service reform signed between the international financial institutions and the

government of Malawi between 1994 and 2002 serves as a case-study and reveals how this fiction of purely technical, not legally binding “arrangements” is constructed. The case study places the construction of “ownership” and “conditionality” in these documents in the wider context of the dejuridification of the operations of the international financial institutions and wants to discuss whether disciplinary boundaries between law and anthropology or legal anthropology and social anthropology are relevant for this analysis.

How can Human Rights be the basis for negotiations between a marginalized community of peoples and the State?

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This paper addresses the ‘relocation exercise’ by the Government of Botswana, of the San/Basarwa and Bakgalagadi residents of the Central Kalahari Game Reserve (CKGR) during 1997 and 2002. It explores the effects of relocation and the ways in which it has led to the dislocation of a peoples. This is illustrated in manifold ways, through the separation of families; the displacement of traditional leaders and imposition of others; the settlement on land viewed as ‘belonging to others’; and the questioning of identity, either self-identification or identification by ‘other’. The domestic debate is to be read within a local history of slavery and ownership of the San/Basarwa by the dominant Bantu-speakers. The internal struggle is further located within a wider international context removed from the local realities. Here, law alone, is not the appropriate tool to ensure sustainable development. Negotiation is a significant strategy for managing and effecting change. The role of civil society, both local and international, influences local dynamics. This paper traces the role and strategies of NGOs in dealing with this social conflict situation. The search continues for a path based upon the respect for the human dignity inherent in all those involved.

Legal pluralism and family law in Syria

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Syria can be characterized as a multicultural and multireligious society. The majority are Sunni Muslims, but there are significant Christians as well as Muslim minorities. Religion is also crisscrossed, or affirmed by ethnic labels like Arab, Kurd, Armenian or Suryoye. Although Syria in many ways can be regarded as a secular country, citizens are obliged to have a religious affiliation. This affects women and men in different and conflicting ways since children inherit both citizenship and religious affiliation from their fathers. If a Muslim man marries a Christian woman this is legally recognized in Syria, but a marriage between a Muslim woman and Christian man is not recognized, unless the man converts to Islam. At the same time there is a certain legal autonomy for religious minorities in the field of family law. The family law of the state is to a large extent based on the Hanafi Islamic rite, but Christians and some Muslim minorities have their own religious courts to regulate marriage and divorce. The legal pluralism of Syria thus serves to maintain boundaries between religious groups. Reforms of the family law in Syria have been piecemeal and cautious, despite the radical rhetoric of the ruling party.

In this paper I would like to analyze the complexity of the Syrian family law and relate it to contemporary debates about identity politics.

The Legal Politics of Cultural Property in Native North America

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The relevance of law to the anthropological analysis of social and political processes can hardly become more obvious than in the context of present-day Native North American societies. Issues of both identity politics vis-à-vis the state and vernacular nationalism of Native American tribes are being articulated in a legal idiom. I will take the example of „cultural property“ to illustrate present-day Native American legal identity politics. US law has declared „cultural patrimony“ to be the comprehensive, enduring property of a tribe and the tribe’s elected officials the guardians of property rights. In recent years tribes have been very successful in establishing control over their cultural heritage, claiming the repatriation of human remains and cultural objects from museum collections, but also, to some extent, in exerting a more informal influence over the proliferation of their intellectual property. Still, there remain numerous questions about e.g. the relationship of collective to individual ownership of cultural resources, of public versus private access, of the translation of historic concepts of property into a modern legal code, of the legitimacy of the local political elites acting as stewards of tribal cultural property, and on the validity of claims by non-recognized groups to their cultural heritage.

Legal anthropology and Anthropology of Law: Certain Epistemological Issues

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Many years of research in Africa (Ethiopia) and Greece, as a social anthropologist and an anthropologist of law, having the opportunity to study different aspects of the legal phenomenon within a society, made me realize of the need to define these two sub-disciplines, since, many times, their boundaries are blurred with other hybrids in the different branches of human sciences. Thus, I will define: *Legal anthropology* as the research and analysis of social and legal relations in documents of transaction, legal acts, etc, (documents of the “pratique du droit”) found in the archives of notaries, or other archives, Court Decisions, or other documents having legal power or use. It belongs to the domain of Social Anthropology; and *Anthropology of Law* as the research of the genesis and function of law and of the legal action within a society in documents belonging to the sources of law *lato sensu*. It belongs to the domain of law.

The legal arena as a battle field: Salafiyya legal intervention and local response in rural Morocco

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The paper examines the legal sphere as an arena of competition between the transnationally active Islamist Salafiyya movement and other legal actors, including the state, for control over local legal practice in a rural area in southwest Morocco. Over a period of a couple of years Salafiyya activists became increasingly influential in rural Morocco. This period was accompanied by Salafiyya attempts to promote a return to the roots of legal Islam, to reorganise social life according to Islamic principles, and to challenge the capacity of other legal actors, particularly those connected with local Islamic practice, to maintain the conditions in which social life could be conducted according to Islamic rules in general and in particular to maintain

local order. The paper thus explores how external intervention in the field of local conflicts leads to a reevaluation of social and religious behaviour and to the negotiation of the perception of socially deviant action. It further shows how transnational religious activity in a plural local legal setting is creating new plurality and provoking a reconsideration of local legal identity and social belonging instead of homogenizing legal practice in accordance with religious dogma.

North Albanian customary law *kanun* as a 'habitus'

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A short passage by Pierre Bourdieu from the early 1970s opens an interesting perspective for legal anthropology. He describes the Kabylia customary law *qanun* as a good example for his concept of 'habitus'. What makes this approach relevant to legal anthropology is the fact that customary law is not regarded as a distinct field of social action; legal practice is, conversely, considered an integral part of the habitus shaped by specific socio-economic conditions.

I discuss this habitus perspective on law using the example of the northern Albanian customary law *kanun*. After the fall of socialism in 1991, democratic structures have taken hold only slowly in Albania. The *kanun* has profited from this power vacuum in the northern part of the country. I will present the habitus of *kanun* and discuss its relation to local socio-economic conditions. As long as no drastic changes take place in northern Albanian society, the *kanun* remain valid since, following Bourdieu, the habitus and the social field perpetuate one another.

