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Peer reviewed

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## **The Comparative Study of Legal Culture Winter 2003**

### **Course Description:**

Legal practices vary both within and between societies, making it difficult to arrive at a universal definition of “law” even though the comparative endeavor presumes that such a definition is possible. This course examines ethnographic depictions of legal cultures, retracing scholars’ shifting understandings of the nature of law while also exploring the complexity and diversity of legal phenomena. The first half of the course focuses on classic ethnographies. This section begins with a consideration of Llewellyn and Hoebel’s classic legal realist text, *The Cheyenne Way*. This book, which was published in the 1940s and is based on the authors’ interviews with Cheyenne elders, attempts to reconstruct Cheyenne methods of resolving “trouble cases,” instances when an individual violates societal norms. In *The Cheyenne Way*, Llewellyn and Hoebel develop a methodology for identifying “laws” in societies that have neither courts nor written codes. The course next turns to Paul Bohannan’s *Justice and Judgment among the Tiv*, an anthropological account of the legal practices of a group of subsistence farmers in Northern Nigeria in the 1950s, under British colonial rule. Through this book, students will learn about “customary law” and colonialism, the informal hearings through which Tiv people settle their disputes, the range of issues that can be raised in such hearings, the problems of “translating” legal concepts from one society to another, and Bohannan’s “judge-centered” view of disputing. Anthropological accounts of disputing in societies like that of the Tiv have served as models for community mediation programs in the United States—a development that, as we shall see, is both interesting and problematic.

The second half of the course takes up three contemporary ethnographies written by major figures in the comparative study of legal culture. The first, *Virtuous Citizens, Disruptive Subjects*, by Barbara Yngvesson, analyzes lower courts in rural New England, focusing on how court clerks differentiate “garbage cases” from citizen complaints in which a legal issue is deemed to be at stake. Yngvesson argues that clerks’ decisions—which are influenced by their understandings of the “good citizen” and the “disruptive subject”—play a role in defining law, distributing rights, and bounding communities. The second, *Pronouncing and Persevering*, by Susan Hirsch, examines how Swahili women use Islamic courts in coastal Kenya. Through an analysis of the stories that Swahili women tell in court, Hirsch finds that although Islamic family law appears to discriminate against women, these women find the courts a source of

empowerment. The third ethnography, *Recharting the Caribbean*, by UCI professor Bill Maurer, studies nation-building and the meanings of citizenship in the British Virgin Islands (BVI). Through fieldwork in the British Virgin Islands as well as analysis of historical documents and even tourist brochures, Maurer recounts the way that the BVI defines and limits belonging even as the BVI itself is placed as a legal entity within the Caribbean and the United Kingdom. The course concludes by identifying issues of space, community, persons, power, property, and the global that are raised by these ethnographies and that in turn redefine the comparative study of legal culture.

This course is designed to encourage active student participation. Films will be used throughout the quarter to provide another venue through which to consider issues raised in course readings. Class sessions will be conducted in a participatory fashion, with opportunities for discussion either as a class or in smaller groups. In addition, students will be asked to think critically about their own legal culture. To this end, each student will do a class project consisting of three smaller assignments: recording and analyzing a trouble case, observing and analyzing a dispute, and analyzing an image or artifact of law. The class project will give each student a small taste of what it is like to study legal culture in a comparative fashion.

### Course readings:

There are five required texts for this class. They are:

Karl N. Llewellyn and E. Adamson Hoebel

1941 *The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence*. Norman: University of Oklahoma Press.

Paul Bohannan

1957 *Justice and Judgment among the Tiv*. Prospect Heights, IL: Waveland Press, Inc.

Barbara Yngvesson

1993 *Virtuous Citizens, Disruptive Subjects: Order and Complaint in a New England Court*. New York: Routledge.

Susan F. Hirsch

1998 *Pronouncing and Persevering: Gender and the Discourses of Disputing in an African Islamic Court*. Chicago: University of Chicago Press.

Bill Maurer

1997 *Recharting the Caribbean: Land, Law, and Citizenship in the British Virgin Islands*. Ann Arbor: University of Michigan Press.

Copies of these readings have been placed on reserve at the library. In addition, all five readings are available for purchase in the UCI bookstore. Two of the

readings (*The Cheyenne Way* and *Virtuous Citizens, Disruptive Subjects*) are out of print, so they are being sold as photocopied coursepacks.

In addition, a number of “law stories”—fictional or experiential accounts of the workings of law—have been placed on reserve in the library. Students are asked to read one of these stories at the beginning of the quarter and one at the end of the quarter. Students may choose which stories they wish to read. The stories are:

Burns, Robert P.

1999 An Interpretation from One Trial. *In A Theory of the Trial*. Pp. 102-123. Princeton: Princeton University Press.

Carter, Lief et al.

1997 Who Is the Victim? On What Grounds Do We Apply the State's Coercive Force? *In New Perspectives on American Law: An Introduction to Private Law in Politics and Society*. Pp. 82-110. Durham: Carolina Academic Press.

Heyck, Denis Lynn Daly

1994 Interviews. *In Barrios and Borderlands: Cultures of Latinos and Latinas in the United States*. Pp. 332-339 and 344-348. New York: Routledge.

Kafka, Franz

1937 In the Cathedral. *In The Trial*. Pp. 197-222. New York: Schocken Books.

Smith, Abbe

1998 On Representing a Victim of Crime. *In Law Stories*. G. Bellow and M. Minow, eds. Pp. 149-167. Ann Arbor: University of Michigan Press.

Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, United States Senate

2001 Problems that American Indian Families Face in Raising their Children. *In Children of the Dragonfly: Native American Voices on Child Custody*. R. Benson, ed. Pp. 105-125. Tucson: University of Arizona Press.

**Course schedule:**

**Week #1: Introduction**

**Monday, January 6:** Introduction to the comparative study of legal culture

**Wednesday, January 8:** Film: *Island of Lost Souls*

Readings: *The Cheyenne Way*, Part I and one law story (choose from the readings on reserve)

**Week #2: Cheyenne Legal Culture**

**Monday, January 13:** Trouble cases, legal realism, and the legal culture of the Cheyenne

**Wednesday, January 15:** Film: *Honorable Nations*

Readings: *The Cheyenne Way*, chapters 4-5

**Week #3: Legal Pluralism and Customary Law**

**Monday, January 20:** No class—Martin Luther King Day

**Wednesday, January 22:** The legacy and shortcomings of *The Cheyenne Way*

Readings: *The Cheyenne Way*, chapters 6-7

**Week #4: Tiv Legal Culture**

**Monday, January 27:** “Translating” legal cultures

Suggested completion date of course project, part A

**Wednesday, January 29:** Self-help, the judicial point of view, and subsequent shifts in the ethnography of law

Readings: *Justice and Judgment among the Tiv*, chapters 1-5, 7

**Week #5: Contemporary Legal Ethnographies**

**Monday, February 3:** Midterm

**Wednesday, February 5:** Garbage cases, lower courts, and the social construction of law

Readings: *Virtuous Citizens, Disruptive Subjects*, chapters 1-4

**Week #6: Legal Culture in the United States**

**Monday, February 10:** Film: *Well-founded Fear*

**Wednesday, February 12:** Persons, places, and rights

Readings: *Virtuous Citizens, Disruptive Subjects*, chapters 5-8

**Week #7: Gender and Islamic Courts in Kenya**

**Monday, February 17:** No class. President’s Day.

**Wednesday, February 19:** Gender and disputing in Khadi’s courts

Readings: *Pronouncing and Persevering*, chapters 1-5

**Week #8: The Role of Law in Creating Persons and Nations**

**Monday, February 24:** Law, language, and power

Suggested completion date of course project, part B

**Wednesday, February 26:** Creating persons and nations in the British Virgin Islands

Readings: *Pronouncing and Persevering*, chapters 6-8 and *Recharting the Caribbean*, introduction and chapters 1-2

**Week #9: Law and Legality in the British Virgin Islands**

**Monday, March 3:** Film: *The Harder They Come*

**Wednesday, March 5:** Citizenship, jurisdictions, and liberal law

Suggested completion date of course project, Part C

Readings: *Recharting the Caribbean*, chapters 3-5 and chapter 8

**Week #10: Conclusion of course**

**Monday, March 10:** Representing legal cultures

**Course project due****Wednesday, March 12:** Conclusion of course

Readings: Another law story (choose from the readings on reserve)

**Final exam: TBA****Policies:**

The midterm and the final exam can only be made up under extraordinary circumstances, such as a car accident, death in the family, or major illness or injury. Prompt notification of extraordinary circumstances is important. It is therefore important for students to plan to be in class on time to take these tests. Please check your schedule now to make sure that you will be able to attend class on exam dates. If you cannot attend on those dates, then you should not take this class.

Coursework must be turned in on time, or early. If the course project is turned in late, there will be a whole letter grade deduction for each day that the project is late. The course project should be handed to the instructor or the teaching assistant in person, NOT slipped under an office door or sent as an email attachment.

**Grades:**

Your course grade will be calculated as follows:

Midterm	30%
Course project	30%
Final exam	40%

**Exams:**

Exams will be essay in format, with some choice of essay question. Please bring a large (8 1/2 by 11) blue book to the final exam. In order to prevent cheating, students' blue books will be collected and redistributed at the beginning of the exam, so please do not write your name or other information on the blue book cover until the exam begins.

**Course Project**

The course project consists of three assignments, to be completed during the quarter and to be turned in as a packet on Monday of the 10<sup>th</sup> week of classes.

**A. Collect and analyze a trouble-case:**

Following the methodology utilized by Llewellyn and Hoebel in *The Cheyenne Way*, each student is to collect and analyze a trouble case. To collect a trouble case, students should interview someone else about a dispute that he or she knows about. (It is best if students do not analyze trouble cases that they were involved in themselves.) Based on your interview, write an account of the trouble case. There are many exam-

ples in *The Cheyenne Way* (see, e.g., p. 135, p. 138, and pp. 140-143). After you write your account, you may show it to the person whom you interviewed in order to check it for accuracy.

When you are finished writing out your trouble-case, analyze the case, using the methods developed by Llewellyn and Hoebel. What was the dispute about? What procedure was used to settle the dispute? Did this procedure involve administering a sanction by an individual with the social authority to do so? From your analysis, what societal norm or norms were violated? And, from the procedure used to resolve the dispute, can you identify the social group within which this norm is valid? (e.g., a family, a sorority, the U.C. Irvine campus, the state of California)

After analyzing your case in the way that Llewellyn and Hoebel would have done, reflect on the strengths and shortcomings of this method of analysis. Are there aspects of the dispute that you feel are omitted in this analysis? If so, what are they? What is the trouble-case method good at revealing, and what is it not good at revealing?

When your analysis is complete, write it up. You should turn in the following:

- (1) a cover page for your course project. The cover page should have your name, your student I.D. number, and the course name.
- (2) A title for this part of the course project (you can put your title on p. 2): Example: "The case of the stolen bicycle"
- (3) A description of how you obtained the trouble case, omitting the real name of the person you interviewed. (Example: "I obtained this case through an interview with my roommate, a 21-year-old female Caucasian U.C.I. student who currently lives in Middle Earth. To obtain the trouble case, I asked her to describe a recent dispute that she witnessed or knew about. It took her a little while to think of one, but eventually she did. I took notes while she told me about the case, and when she was done, I wrote out a description of what happened. I showed her my description when I was finished, and she made a couple of corrections. Here is the account.")
- (4) Your write-up of the trouble-case.
- (5) Your analysis of the way that Llewellyn and Hoebel would have analyzed this case.
- (6) Your assessment of the strengths and weaknesses.

Suggested completion date: January 27th

## B. Observe and analyze a dispute

Unlike Part A of this project, which is based on an interview about a dispute, to complete Part B, students must observe an actual dispute and its resolution themselves. To observe a dispute, you may attend a court hearing (for example, many cases are heard regularly in traffic court), observe some other type of hearing or procedure (e.g., in a sorority or a dorm, if such procedures occur), or witness a dispute between friends or within a family. It is best to observe a dispute over actual behavior (e.g., a couple disagrees about whose family to visit over the holidays) rather than simply an argument (one person argues that George Bush is the greatest president to date and another person argues that he is the worst). It is also best to observe a dispute that you are not involved in personally, though it is fine if you are friends with the participants. If you are observing a dispute in a non-public setting, make sure that you obtain participants' permission before you write about the dispute.

After observing your dispute, write down a complete account of what happened, including the context (where the dispute occurred, how it came up), what people said and did, and how the dispute was settled. There are examples of descriptions of disputes in the readings by Bohannon, Yngvesson, and Hirsch. If you are deliberately observing a dispute in a setting such as a court, then you will probably be able to take notes during the dispute. If you happen to witness a dispute involving roommates, co-workers, friends, a couple, parents and children, etc., then you may not be able to take notes as it occurs. If that is the case, then as soon as possible after it is over, you should write down as much as you can remember. It is best not to write about a dispute that you observed prior to this quarter, as you will not be able to remember as many details.

After you write out a detailed description of the dispute, analyze the event. Reflect on the readings by Bohannon, Yngvesson, and Hirsch as examples of how to analyze a dispute. What types of arguments are made by disputants and why? Does this dispute reveal anything about power and hierarchy? Is law cited, and if so, how? What types of authority or norms do disputants appeal to and how? (e.g., Someone might say, "It's not fair if I have to do more work than you do!" thus appealing to the norm that work should be equally distributed). Does this dispute reveal anything about disputants' legal consciousness or about the connections (or disconnections) between law and other facets of culture?

When you are finished analyzing your dispute, write up your analysis. In your write-up, include some discussion of the relationship between



your analysis and the course readings. E.g., Does your analysis of this dispute give you additional insight into a point made in one of the readings? How would you compare your dispute to those analyzed in the readings? Do you find that, because of your analysis, you are critical of certain arguments made in the readings? Does your analysis provide an example of or alternative to something discussed in the readings?

Turn in the following:

- (1) A title for the dispute that you observed. Example: "OBSERVATION OF A DISPUTE: 'Where to go over the holidays'"
- (2) A description of how you came to observe this dispute, the context, the people involved (omitting real names), and how you wrote up your observations.
- (3) Your account of the dispute, based on your observations.
- (4) Your analysis of the dispute, including your comments on how your analysis relates to course readings.

\*\*\* Make sure that your name is on every page of the course project.

Suggested completion date: February 24<sup>th</sup>.

### C. Analysis of an image or artifact of law

For part C of the course project, you should identify an image or artifact of law. Be creative in choosing the artifact that you want to analyze. You might choose a map, a label, a legal document, something that you find on the web, a sign. Pick something interesting that you will be able to say something about. The book *Recharting the Caribbean* will help you think of something to choose.

If at all possible, you need to provide a copy of the image or artifact that you are analyzing. You may take a picture, print out an image, photocopy an image, provide the actual artifact (if it is small enough); whatever works.

After you choose an image or artifact, write a description of what it is, how and where you found it and what you know about it. You may do some library research about your image, if you wish, but that is not required. You may also discuss your image or artifact with other people, if you like, in order to solicit their views on its meaning and significance. Your description of what you know about the image or artifact may incorporate their views and anything you find out through library research.

After you have written your description of the artifact, analyze the artifact or image. The book *Recharting the Caribbean* (e.g., image on p. 9 and the accompanying discussion, or image on p. 214 and accompanying discussion) and other course readings provide examples of such analysis. What does this image or artifact convey about law and legal culture? Why? How? And to whom?

Turn in the following:

- (1) A title for your image or artifact. Example: ANALYSIS OF AN IMAGE OR ARTIFACT OF LAW: The Birth Certificate
- (2) A copy, picture, or example of your image or artifact (if at all possible).
- (3) A description of the artifact or image, including what it is, its features, how and where you encountered it, what you know about it, and how you know this.
- (4) Your analysis of the artifact, including (if possible but this is not required) how your analysis draws on course readings.

Suggested completion date: Wednesday, March 5<sup>th</sup>.

Due date for course project: Monday, March 10<sup>th</sup>.

### Working Bibliography

Note: This is not a comprehensive bibliography of work in this field, but rather is intended to provide a starting point for students who wish to do further reading.

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2001 *Deadliest Enemies: Law and the Making of Race Relations on and off Rosebud Reservation*. Berkeley: University of California Press.

Brenneis, Don

1988 Language and Disputing. *Annual Review of Anthropology* 17:221-237.

Collier, Jane

1973 *Law and Social Change in Zinacantan*. Stanford: Stanford University Press.

Comaroff, John L. and Simon Roberts

1981 *Rules and Processes: The Cultural Logic of Dispute in an African Context*. Chicago: University of Chicago Press.

Conley, John M. and William M. O'Barr

1990 *Rules versus Relationships: The Ethnography of Legal Discourse*. Chicago: University of Chicago Press.

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1997 *Incorporating the Familiar: An Investigation into Legal Sensibilities in Nunavik*. Montreal: McGill-Queen's University Press.
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1995 *The Golden Yoke: The Legal Cosmology of Buddhist Tibet*. Ithaca: Cornell University Press.
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1955 *The Judicial Process among the Barotse of Northern Rhodesia*. Glencoe, Ill: Free Press.
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1926 *Crime and Custom in Savage Society*. New York: Harcourt, Brace & Company, Inc.

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1993 *The Calligraphic State: Textual Domination and History in a Muslim Society*. Berkeley : University of California Press.

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1986 *Social Facts and Fabrications : "Customary" Law on Kilimanjaro, 1880–1980*. Cambridge, Eng.: Cambridge University Press.

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2002 *The Life of the Law: Anthropological Projects*. Berkeley: University of California Press.

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1978 *The Disputing Process: Law in Ten Societies*. New York: Columbia University Press.

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