

## **Law in Society 2010/11**

### **Readings and seminar topics**

#### **Michaelmas term**

*Professor Denis Galligan*

*Theme 1: From analytical jurisprudence to law and society*

1. *What is the study of law in society?*

M. Weber, *Economy and Society* (ed) G. Roth and C. Wittich (U. of California Press, 1978) (Volumes I and II): pp. 3-36

E. Durkheim, *Division of Labour in Society* (Free Press 1984): pp. 24-29; 68-86; 172-174-

N. Luhmann, *Law as a Social System* (English ed, Oxford, 2004): pp. 72-75; 76-141

D. J. Galligan, *Introduction in Socio-Legal Studies in Context: The Oxford Centre Past and Future* (Blackwell, 1995)

*Further reading*

A. Giddens, *The Constitution of Society* (Polity 1984): chapter 4

C. Grace and P. Wilkinson, *Sociological Inquiry and Legal Phenomena* (Collier Macmillan, 1978): Chapter 2

2. *For discussion of the character of social explanation;*

A. Ryan, *The philosophy of the Social Sciences* (Macmillan, 1970)

P. Baert, *Philosophy of the Social Sciences* (Polity, 2005)

A. Giddens, *The Constitution of Society* (Polity, 1984) Introduction and Chapter 1

R. Dworkin, *Justice in Robes* (Harvard, 2006) Introduction

3. *Hart and the social explanation of law*

H. L. A. Hart, *The Concept of Law* (Clarendon, 1961) Chapters 1 – 4

J. Finnis, *Natural Law and Natural Rights* (Clarendon, 1980) Chapter 1

D. J. Galligan, *Law in Modern Society* (Clarendon, 2006) Chapter 1

4. *The subject of study in law and society*

N. Luhmann, *Law as a Social System* (Oxford, 2004) pages 3 – 13, 53 – 88

D. J. Galligan, *Law in Modern Society* Chapter 2

### 5. Aims and methodologies

E. Durkheim, *The Rules of Sociological Method* (Free Press, 1938) Chapter 1

M. Weber, *Economy and Society* (ed) G. Roth and C. Wittich (University of California, 1968) volume 1, pages 3 – 36

D. J. Galligan, *Law in Modern Society* Chapter 6

### Theme 2: Law as social rules

#### 1. Law as social rules

\*Hart, *The Concept of Law* chapters 1 – 4

D. North, *Institutions, Institutional Change, and Economic Performance* chapter 5

L. Green, “The Concept of Law Revisited” (1996) *Michigan Law Review* 1687

M. Weber, *Economy and Society* pp. 29-38, 311- 337

#### 2. The connection between rules and their social environment

\*Galligan, *Law in Modern Society* chapter 3

E. Durkheim, *The Division of Labour* pp. 24 - 29

D. Robertson, *Judicial Discretion in the House of Lords* chapters 1 and 10

J. Baldwin, N. Whiteley, and R. Young, *Judging Social Security* (an empirical study of how officials apply rules)

#### 3. Law prior to rules

\*Galligan, *Law in Modern Society* chapter 4

\*S. Falk Moore, *Law and Anthropology* Part 2

J. H. Baker, *An Introduction to English Legal History* chapters 1 and 2

#### 4. Law as a system of rules

\*Hart, *The Concept of Law*

\*A. Marmor, *Positive Law and Objective Values* chapter 2

A. Etzioni, “Social Norms: Internalization, Persuasion, and History” 34 (2000) *Law and Society* 157

M. Kurkchian, “The Illegitimacy of Law in Post-Soviet Societies” in Galligan and Kurkchian, *Law and Informal Practices*

P. Winch, *The Idea of Social Science and its Relation to Philosophy*

\*Galligan, *Law in Modern Society* chapter 5

### *Theme 3: Law through social spheres*

#### *1. Elements of social spheres*

\*North, *Institutions, Institutional Change and Economic Behaviour*, pp.

R. Putman, *Making Democracy Work* (Princeton, 1993)

E. Osrom, *Governing the Commons* (Cambridge, 1990)

F. Haines, *Corporate Behaviour* (Oxford, 1997), pp. 1 - 14

\*Galligan, *Law in Modern Society*, chapter 6

#### *2. Cognitive, normative, and regulative character of social spheres*

\*W. R. Scott, *Institutions and Organizations* (London, 1995), pp. 1 – 32

R. Harre' and P. Secord, *The Explanation of Social Behaviour* (Blackwell, 1972)

J. Peay, *Tribunals on Trial*

N. Eastman and J. Peay, *Law Without Enforcement* (Oxford, 1998)

#### *3. On autopoiesis*

\*N. Luhmann, *Law as a Social System*, pp. 72 – 75, 86 - 88

### *Theme 4: Social value of law*

#### *1. On functions*

\*Durkheim, *The Division of Labour in Society*, chapter 1

J. Raz, "On the functions of law" in A.W.B.Simpson (ed) *Oxford Essays in Jurisprudence: Second Series* (1972)

\*B. Garth and A. Sarat, "Studying How Law Matters: An Introduction" in Garth and Austin (ed) *How Does Law Matter?* (1998)

\*Galligan, *Law in Modern Society*, chapter 11

Luhmann, *Law as a Social System*, chapter 3

Hedley Bull, *The Anarchical Society*, chapter 1

K. Renner, *The Institutions of Private Property and Their Social Functions* (1949) see introduction by O. Kahn-Freund

M. Douglas, *Risk and Blame: Essays in Cultural Theory* (1992)

#### *2. Doing without law*

\*R. Ellickson, *Order Without Law* (1991) pp. 52-54, 71-79, 137-155

S. Macaulay, "Doing Without Law" in C. Campbell and P. Wiles (eds) *Law and Society 1979*

3. *On the classification of laws*

\*Weber, *Economy and Society* (volume II) pp. 641 – 658

\*Galligan, *Law in Modern Society*, chapter 12

4. *On law's contribution to social goods*

\*Finnis, *Natural Law and Natural Rights*, 266 – 270

P. Atiyah, *Introduction to the Law of Contract* (4<sup>th</sup> ed 2001) (private relations: contract)

T. Weir, *Tort Law* ((2002), chapter 1 (private relations: tort)

A. Ashworth, *The Criminal Process: An Evaluative Study* (1994) chapter 2 (criminal law)

Galligan, *Discretionary Powers* (1986) pp. 88- 99 (citizen-officials relations)

A. Ogus, *Regulation: Legal Form and Economic Theory* (1994) pp. -- (relations between citizens and officials).

## Michaelmas term

Dr. Fernanda Pirie

### 1 Identifying law in non-western societies.

Malinowski, B. 1926. *Crime and custom in savage society*. London: Kegan Paul [esp. chs. I, IV, X, XI, XIII]

Moore, Sally Falk. 1973. 'Law and social change: the semi-autonomous social field as an appropriate subject of study.' *Law and Society Review*, 719-46 (and in Moore, *Law as process: an anthropological approach*).

Wormald, Patrick. 1999. *Legal culture in the early Medieval West*. London: The Hambledon Press. [Ch 1]

### 2 Order and disputes

#### *On disputing and conflict resolution*

\* Roberts, Simon. 1979. *Order and dispute*. Oxford: Penguin. [Chs 3 & 4]

\* Comaroff, John and Simon Roberts. 1981. *Rules and processes: the cultural logic of dispute in an African context*. Chicago University Press. [Introduction, esp. to p. 21]

#### *Case studies on conflict, order, feuding and violence*

Gulliver, P.H. 1969. 'Case studies of law in non-western societies,' in L. Nader (ed.) *Law in culture and society*. Berkeley: University of California Press.

von Benda-Beckmann, Keebet. 1981. 'Forum shopping and shopping forums: dispute processing in a Minangkabau village.' *Journal of legal pluralism* 19: 117-159.

\* Evans-Pritchard, E. E. 1940. *The Nuer: a description of the modes of livelihood and political institutions of a Nilotic people*. Oxford: OUP. [Ch 4]

Gluckman, Max. 1955. 'The peace in the feud', in M. Gluckman (ed.) *Custom and conflict in Africa*. Oxford: Blackwell.

Peters, Emrys. 1967. 'Some structural aspects of the feud among the camel-herding Bedouin of Cyrenaica'. *Africa* 37(3): 262-282. (Also in *The Bedouin of Cyrenaica*).

Black-Michaud. 1975. *Cohesive force: feud in the Mediterranean and the Middle East*. Oxford: Blackwell. [ch 1, esp. 23-31]

\*Pirie, Fernanda. 2007 'Order, individualism and responsibility: contrasting dynamics on the Tibetan plateau.' In K. von Benda-Beckmann and F. Pirie (eds) *Order and disorder: anthropological perspectives*, Oxford: Berghahn'.

\* Strathern, Marilyn. 1985. 'Discovering social control', *Journal of Law and Society*, 12: 111-34.

\* Harrison, Simon. 1993. *The mask of war*. Manchester University Press. [Introduction, esp. pp. 1-6, 21-26]

\* Stephens, Thomas. 1992. *Order and discipline in China: the shanghai Mixed Court 1911-27*. [Introduction]

### 3 *Legal pluralism and the problem of ethnocentrism.*

- Griffiths, John. 1986. 'What is legal pluralism?' *Journal of Legal Pluralism and Unofficial Law* 19: 1-47.
- \* Merry, Sally Engel. 1988. 'Legal pluralism'. *Law and Society Review*, 22:869-96.
- \* Tamanaha, Brian. 1991. 'The folly of the 'social scientific' concept of legal pluralism' *Journal of Law and Society* 20(2): 192.
- Greenhouse, Carol & Fons Strijbosch. 1993. 'Legal pluralism in industrialized societies'. *Journal of Legal Pluralism*, 33: 1-9.
- Roberts, Simon. 1994. 'Law and dispute processes'. In *Companion encyclopaedia of anthropology: humanity, culture and social life*, T. Ingold (ed.) London: Routledge.
- \* Fuller, Chris. 1994. 'Legal anthropology, legal pluralism and legal thought'. *Anthropology Today* 10(3): 9-12.
- Roberts, Simon. 1998. 'Against legal pluralism: some reflections on the contemporary enlargement of the legal domain'. *Journal of Legal Pluralism*, 42: 95-106.
- Woodman, Gordon. 1998. 'Ideological combat and social observation: recent debate about legal pluralism'. *Journal of Legal Pluralism*, special issue, 42: 21-59
- Greenhouse, Carol. 1998. 'Legal pluralism and cultural difference: what is the difference?' *Journal of Legal Pluralism*, special issue, 42: 61-72.
- von Benda-Beckmann, Franz. 2002. 'Who's afraid of legal pluralism?' *Journal of Legal Pluralism*., 47: 37-82.
- Griffiths, Anne. 2002. 'Legal pluralism'. In *An introduction to law and social theory*, R. Banakar and M. Travers (eds). Oxford: Hart.
- \* Roberts, Simon. 2005. 'After government: on representing law without the state.' *Modern Law Review* 68(1): 1-24.
- \*Galligan, Denis. 2006. *Law in modern society*. Oxford: University Press. [Chs 4, 10].
- \* von Benda-Beckmann, Franz and Keebet von Benda-Beckmann. 2006. 'The dynamics of change and continuity in plural legal orders.' *Journal of Legal Pluralism*, 54/54: 1-44 [pp. 11-17].

### 4 *Law as culture, law as power*

- Geertz, Clifford. 1983. Local knowledge: fact and law in comparative perspective, in Geertz, C. (ed.) *Local knowledge*. New York: Basic Books. [particularly pp. 181–215]
- Starr, J. and J. Collier (eds). 1989. *History and power in the study of law*. Cornell. [Introduction].
- Just, Peter. 1992. History, power, ideology and culture: current directions in the anthropology of law. *Law and Society Review* 26(2): 373-411.

#### *Case studies*

- Rosen, Lawrence. 1989. Law and culture: the appeal to analogy in Islam, in *The anthropology of justice: law as culture in Islam*. Cambridge: University Press.
- Nader, Laura. 1989. 'The crown, the colonists and Zapotec village law', in J. Starr and J. Collier (eds) *History and power in the study of law*. Cornell.
- Greenhouse, Carol. 1989. 'Interpreting American litigiousness', in J. Starr and J. Collier (eds) *History and power in the study of law*. Cornell.

Cohn, Bernard. 1989. 'Law and the colonial state in India', in J. Starr and J. Collier (eds) *History and power in the study of law*. Cornell.

Also:

Fuller, Chris. 1994. 'Legal anthropology, legal pluralism and legal thought.' *Anthropology Today* 10(3): 9-12.

Just, Peter. 2001. *Dou Donggo justice: conflict and morality in an Indonesian society*. [Intro., esp. pp. 19-26, Ch 3]

Nader, Laura. 1990. *Harmony ideology: justice and control in a Zapotec mountain village*. Stanford University Press. [esp. Preface, Introduction, Chs 14 & 15].

Nader, Laura. 2005. 'The Americanization of international law', in F. and K. von Benda-Beckmann and A. Griffiths (eds), *Mobile people, mobile law*. Ashgate.

Moore, Sally F. 1989, 'History and the redefinition of custom on Kilimanjaro', in J. Starr and J. Collier (eds) *History and power in the study of law*. Cornell.

## 5 *Human rights - theory and practice.*

\* Wilson. R. (ed.) 1997. *Human rights, culture and context: an introduction*. London: Pluto Press.

\* Merry, Sally. 1997. 'Legal pluralism and transnational culture: the Ka Ho'okolokolonui Kanaka Maoli Tribunal, Hawai'i, 1993' in R. Wilson (ed.) *Human rights, culture and context*. London: Pluto.

\* Nathan, Andrew. 1986. 'Sources of Chinese rights thinking', in R. Edwards et al. *Human rights in contemporary China*.

Merry, Sally. 1992. 'Anthropology, law and transnational processes' *Annual review of anthropology*, 21: 357-79.

Wilson, R. 2007. 'Conclusion' 2007 In M. Goodale and S. Merry (eds) *The practice of human right: tracking law between the global and the local*.

Goldstein, Daniel. 2007. 'Human rights as culprit, human rights as victim: rights and security in the state of exception', in M. Goodale and S. Merry (eds) *The practice of human right: tracking law between the global and the local*.

Speed, Shannon. 2007. 'Exercising rights and reconfiguring resistance in the Zapatista Juntas de Buen Gobierno.' in M. Goodale and S. Merry (eds) *The practice of human right: tracking law between the global and the local*.

## 6 *Law and custom*

\* Diamond, Stanley. 1973. The rule of law versus the order of custom. In D. Black and M. Maleski (ed.) *The social organization of law*. New York: Seminar Press.

\* Cheyette, Frederic. 1970. 'Suum cuique tribuere' *French Historical Studies* 6(3): 287-99.

\_\_\_\_\_. 1978. 'The invention of the state', in, B. Lackner & K. Philp (eds), *Essays on Medieval Civilization*.

Chanock, Martin. 1985. *Law, custom and social order*. Cambridge: University Press.

[Ch 1, esp. pp. 3-10, ch 12, esp. pp. 219-224, 236-239].

\* Goody, Jack. 1986. *The logic of writing and the organization of society*. Cambridge: University Press. [Chapter 4, 'The letter of the law']

- Clanchy, M.T. 1970. 'Remembering the past and the good old law', *History* 55:165–76.
- Baker, J. H. 1979. *An introduction to English Legal History*. [Chapters 1, 2, 12].
- Roberts, Simon. 2005. 'After government: on representing law without the state.' *Modern Law Review* 68(1): 1-24.
- \* Ibbetson, D. 2007 Custom in medieval law. In A. Perreau-Saussine and J.B. Murphy (eds) *The Nature of Customary Law: legal, historical and philosophical perspectives*, Cambridge: University Press.
- Barnwell, P.S. 2000. Emperors, jurists and kings: law and custom in the late Roman and early medieval West, *Past and Present* 168/1, 6-29.
- \* Stein, P. 1999. *Roman Law in European History*. Cambridge: University Press. [chapters 2\* and 3].

## 7 Law as rules

- \* Hart, H.L.A. 1961. *The Concept of Law*. Oxford: University Press. [chs 3 & 5]
- \* Honoré, A. M. 1977. 'Real laws'. In P. Hacker and J. Raz (eds) *Law, morality and society*. Oxford: University Press.
- \*Lucas, J.R. 1977. 'The phenomenon of law. In P. Hacker and J. Raz (eds) *Law, morality and society*. Oxford: University Press.
- \* Fallers, Lloyd. 1969. *Law without precedent*. Chicago: University Press. [chs. 1 & 4].
- Stein, Peter. 1999. *Roman law in European history*. Cambridge: University Press. [ch 4].
- Dresch, Paul. 2006. *The rules of Barat: tribal documents from Yemen*. [selection]
- Pirie, Fernanda. 2009. 'From tribal Tibet: the significance of the legal form'. In M. Freeman and D. Napier (eds) *Law and anthropology*. Oxford: University Press.

## 8 Law, justice and aspiration

- \*Wormald, Patrick. 1999. *Legal culture in the early Medieval West*. London: The Hambledon Press. [Ch 1]
- Dresch, Paul. 2006 *The rules of Barat: tribal documents from Yemen*. [Introduction, pp. 1-10, Ch 3, pt c, pp. 229-234, Ch 7, esp. pp. 296-]
- \*Messick, B. 1986. 'The Mufti, the text and the world: legal interpretation in Yemen', *Man* 21: 102–19.
- Pirie, Fernanda. 2009. 'From tribal Tibet: the significance of the legal form'. In M. Freeman and D. Napier (eds) *Law and anthropology*. Oxford: University Press.
- Cotterell, Roger. 1999. *Emile Durkheim: law in a moral domain*. Edinburgh University Press. [Ch 1, ch 13.
- \*Porter, Jean. 2007. 'Custom, ordinance and natural right in Gratian's *Decretum*.' In A. Perreau-Saussine and J.B. Murphy (eds) *The Nature of Customary Law: legal, historical and philosophical perspectives*, Cambridge: University Press.