

Davina Cooper

LAW AND SOCIETY:  
REGULATING COMMUNITIES

Autumn 2010

Aims and objectives of the course:

1. To explore how communities are regulated and how they regulate themselves
2. To locate law as a regulatory structure in relation to other regulatory structures
3. To explore what makes a particular process law-like, and to address the differences between formal and informal law
4. To consider the relationship between regulation, freedom and empowerment
5. To address community challenges to law and other forms of internal and external regulation, and to consider what happens when regulation breaks down

Week One

Introduction

Week Two

Legal pluralism

Questions:

1. In what ways are non-state-based legal frameworks (such as customary or religious law) different to state-based legal frameworks?
2. In what conditions do different legal frameworks or orders encounter each other; which take precedence; and why?
3. What's required for an ordering system to constitute a *legal* order?

Readings:

De Sousa Santos, Boaventura. 2006. "The heterogeneous state and legal pluralism in Mozambique." *Law & Society Review* 40:39-76.

Griffiths, John. 1986. "What is legal pluralism?" *Legal Pluralism and Unofficial Law* 24:1-56.

Merry, Sally Engle. 1988. "Legal pluralism." *Law and Society Review* 22:869-896.

Week ThreeCritical legal pluralism and critiqueQuestions:

1. What are the problems with legal pluralism as a conceptual framework?
2. Does contemporary work on legal pluralism avoid the problems Brian Tamanaha identifies in earlier work?
3. Is it worth distinguishing law-making from norm-making?
4. Does law require particular forms of sanction or recognition?

Readings:

Kleinhans, Martha-Marie and Roderick Macdonald. 1997. "What is a *critical* legal pluralism?" *Canadian Journal of Law & Society* 12:25-46.

Melissaris, Emmanuel. 2004. "The more the merrier? A new take on legal pluralism." *Social and Legal Studies* 13:57-79.

Tamanaha, Brian. 1993. "The folly of the 'social scientific' concept of legal pluralism." *Journal of Law and Society* 20:192-217.

Week FourGovernmentality and regulation beyond the lawQuestions:

1. Can other governing techniques achieve similar effects to legal regulation?
2. What does it mean to describe empowerment as a form of regulation?
3. Does regulating restrict people's agency or mobilise and use it?
4. Is enhancing freedom through governance always more than a way of regulating?

Readings:

Ilean, Suzan and Anita Lacey. 2006. "Governing through empowerment: Oxfam's global reform and trade campaigns " *Globalizations* 3:207-225.

Kinsman, Gary. 1996. "Responsibility as a strategy of governance: Regulating people living with AIDS and lesbians and gay men in Ontario " *Economy and Society* 25:393-409.

Rose, Nikolas, Pat O'Malley, and Mariana Valverde. 2006. "Governmentality." *Annual Review of Law & Social Science* 2:83-104.

Week Five – reading weekWeek SixSummerhill SchoolQuestions:

1. To what extent did Summerhill School draw on mainstream legal techniques (such as law-making, property, fines), and why?
2. Did Summerhill create new ways of understanding property, and did property work at the school in unexpected ways?
3. To what extent were school members supposed to be self-regulating; and how was this achieved?
4. What effects did external forms of regulation and control have on the school?

Readings:

Appleton, Matthew. 2000. *A Free Range Childhood: Self Regulation at Summerhill*. Brandon, Vermont: Foundation for Educational Renewal. Chapters 4, (5, 7 optional)

Cooper, Davina. 2007. "Opening up ownership: Community belonging, belongings, and the productive life of property." *Law and Social Inquiry* 32:625-664.

Stojnova, Dusan , Vladimir Dzinovicb, and Jelena Pavlovicb. 2008. "Kelly meets Foucault: Understanding school underachievement " *Journal of Constructivist Psychology*, 21:43-59.

Stronach, Ian. 2005. "Progressivism against the audit culture: the continuing case of Summerhill School versus OFSTED." *ESRI: Education and Social Research Institute*

## Week Seven

### Speakers Corner

#### Questions:

1. How, historically and in the present, is Speakers Corner regulated?
2. Is 'free speech' the antithesis of regulation or a means of achieving it?
3. Does a 'market-place of ideas' work; and if so, in what ways does it work?
4. How important are informal norms at the Corner, and how are they maintained?

#### Readings:

McIlvenny, Paul. 1996. "Popular public discourse at Speakers' Corner: Negotiating cultural identities in interaction." *Discourse & Society* 7:7-37.

Roberts, John. 2000. "The enigma of free speech: Speakers' Corner, the geography of governance and a crisis of "rationality"." *Social and Legal Studies* 9:271-292.

—. 2008. "Expressive free speech, the state and the public sphere: A Bakhtinian-Deleuzian Analysis of 'public address' at Hyde Park " *Social Movement Studies* 7:101-119.

Tyndall, Adam. 2009. "'It's a public, I reckon': Publicness and a suburban shopping mall in Sydney's Southwest." *Geographical Research* 48:123-136.

## Week Eight

### Public Sex

#### Questions:

1. Is public sex unregulated or just regulated differently?
2. What makes sex "public" – where it happens, who is present, the function of the location?
3. What role should harm play in regulating public sex; how should harm be conceptualised; and whose harm matters?
4. Is public sex a means of promoting freedom – for individuals or groups?
5. Are venues for public sex, such as the Toronto Women's Bathhouse, internally governed; and what mechanisms do organisers (and others) use to govern them?

Readings:

Bain, Alison and Catherine Nash. 2007. "The Toronto Women's Bathhouse raid: Querying queer identities in the courtroom." *Antipode* 39:17-34.

Bell, David. 2006. "Bodies, technologies, spaces: On 'dogging'." *Sexualities* 9:387-407.

Cooper, Davina. 2009. "Caring for sex and the power of attentive action: Governance, drama, and conflict in building a queer feminist bathhouse." *Signs* 35: 105-130.

Hennelly, Sean. 2010. "Public space, public morality: The media construction of sex in public places." *Liverpool Law Journal* 31:69-91.

Week NineInternet worlds and Second LifeQuestions:

1. How do norms develop to regulate internet play?
2. What place does law occupy in Second Life?
3. Is virtual law significantly different from actual law?
4. Does regulation happen more effectively in non-legal ways?

Readings:

Boellstorff, Tom. 2008. *Coming of age in second life*. Princeton: Princeton University Press.

Chin, Bettina. 2006-7. "Regulating Your Second Life - Defamation in Virtual Worlds." *Brook Law Review* 72:1303-.

Lessig, Lawrence. 1996. "The zones of cyberspace." *Stanford Law Review* 48:1403-1411.

Stoup, Phillip. 2008-9. "The Development and Failure of Social Norms in Second Life." *Duke Law Journal* 58:311.

Week tenNudismQuestions:

1. What rules and norms regulate nudist conduct and community life?
2. Is public nudity under or over-regulated?
3. To what extent is nudity regulated differently according to whether it happens in nudist or non-nudist spaces?
4. Are there good reasons why people shouldn't walk on city streets naked? If so, what are they?
5. Is disgust or embarrassment an effective means of regulating or a legitimate motivation for regulating?

Readings:

Barcan, Ruth. 2001. "The moral bath of bodily unconsciousness: Female nudism, bodily exposure and the gaze." *Continuum* 15:303-317.

Cover, Rob. 2003. "The naked subject: Nudity, context and sexualization in contemporary culture." *Body & Society* 9:53-72.

Grabham, Emily. 2009. "Shaking Mr Jones: Law and touch." *International Journal of Law in Context* 5:343-353.

McLellan, Josie. 2007. "State Socialist Bodies: East German nudism from ban to boom." *Journal of Modern History* 79:48-79.

Week ElevenLocal Exchange Trading Schemes (LETS)Questions:

1. To what extent do LETS control and structure trades or exchanges that take place between members?
2. What techniques can and have LETS used to shape and direct member activity?
3. Were LETS successful in effectively regulating members' activities? If not, why not?
4. To what extent did money, within LETS, function as a means of regulating members participation?
5. Were LETS a public or private structure, and how relevant is this to determining what forms of regulation are appropriate?

Readings:

Aldridge, Theresa, Jane Tooke, Roger Lee, Andrew Leyshon, Nigel Thrift, and Colin Williams. 2001. "Recasting work: The example of local exchange trading schemes." *Work, Employment & Society* 15:565-579.

Lee, Roger. 1996. "Moral money? LETS and the social construction of local economic geographies in Southeast England." *Environment and Planning A* 28:1377-1394.

North, Peter. 1999. "Explorations in heterotopia: Local exchange trading schemes (LETS) and the micropolitics of money and livelihood." *Environment and Planning D: Society and Space* 17:69-86.

Williams, Colin. 1996. "The new barter economy: An appraisal of local exchange and trading systems (LETS)." *Journal of Public Policy* 16:85-102.

Week Twelve - Writing Week