

COLLEGE OF THE HOLY CROSS
Department of Sociology & Anthropology

ANTH 252
Anthropology of Law

Fall 2023

Instructor: Doug Bafford
Email: dbafford@holycross.edu

Office Hours: Mondays 3:00-4:00 PM, Wednesdays 10:00-11:00 AM, and by appointment Mondays, Wednesdays, and Fridays

Office Location: Beaven Hall 230

Class Meeting Times: Wednesdays and Fridays, 8:30-9:45 AM

Class Meeting Location: Stein Hall 118 C



Course Information:

Course Description

This course explores cross-cultural variation within and among legal institutions. Through the medium of ethnography, as well as original primary-source research into court proceedings and legal disputes, we consider how law becomes a mechanism for the maintenance of social order at the same time that it can contribute to social inequity. We will address central questions in the anthropology of law: How does our cultural background influence how we conceptualize justice? What are the consequences of finding oneself between competing legal systems? Our focus will be to examine critically the social and cultural dynamics behind dispute resolution, corporate law, crime, torts, religious law, and international courts, as well as dilemmas around policing and other ways people encounter “the law” in everyday life. Case studies from diverse legal environments in both industrialized and small-scale societies will help place Western law traditions in a comparative, global perspective.

Prerequisites

There are no formal prerequisites. However, those with little familiarity with anthropology should be prepared to read extra materials in the first couple weeks of the semester to help orient themselves.

Common Areas and Affiliated Programs

This course fulfills the Social Science common area of the undergraduate curriculum. It can also be applied as an elective to either the International Studies program or the Rhetoric and Composition minor. For more information, consult the program administrator for each respective program. Students interested in potentially declaring a major or minor in anthropology can learn more from the Department of Sociology & Anthropology.

Course Materials

The following books are required for full participation in the course. They are available at the Holy Cross bookstore, but you can also find them online through most major retailers. Feel free to procure them in whatever format, print or electronic, you prefer. All other course materials will be available on Canvas.

Kate Ramsey. 2011. *The Spirits and the Law: Vodou and Power in Haiti*. Chicago: The University of Chicago Press.

Lawrence Rosen. 2006. *Law as Culture: An Invitation*. Princeton, NJ: Princeton University Press.

Learning Goals

By the end of this course, you should be able to

- Connect economic, political, and social history to the forms taken by contemporary Western legal systems
- Compare legal institutions from multiple traditions and nation-states to elicit their common features and points of divergence
- Challenge our taken-for-granted ideas about the foundations of the law and the deep effects it has on people's everyday lives through agents of the state
- Explain the diverse functions of law, including the moments at which it may reproduce social inequality or produce unjust outcomes
- Design and produce original ethnography and primary-source research in legal anthropology to reveal oft-ignored dynamics of everyday courtroom settings across cultural boundaries

Assignments and Coursework:

Empirical Research before the Court

While the law is sometimes presented as a domain unto itself, decisions about the administration of justice are increasingly entwined with the development of knowledge in the scientific community. The first essay you will write applies empirical insights from the social sciences to a legal case of your choice. You will choose a well-documented legal case and consider how the judge's or jury's decision could have been informed by a published research study. This assignment will ask you to formulate social scientific questions and look at the court's work ethnographically, going beyond the philosophical aspects of cases to consider how they rely on shifting understandings of human nature, forensic evidence, and the natural world. More details about how to investigate your case, identify a suitable empirical study, and compose your essay are available on Canvas and will be discussed throughout the first month of class.

Courtroom Ethnography

For this assignment, you will conduct ethnographic fieldwork in a courtroom setting. Your goal is to analyze critically the legal proceedings you witness and to describe how they connect to broader social processes. Many jurisdictions in the U.S. and elsewhere make access to courtrooms a matter of public record. Depending on which courts you would be interested in attending, you should have a number of options, both local in the greater Worcester area and further afield of campus. After conducting your research and taking copious notes on what you observe, you will compose an essay of approximately six double-spaced pages that considers what an "ethnographic" approach to this social setting reveals. In

other words, you should suggest how an anthropological approach to law provides a different perspective than a legal expert might offer. More guidance for how to initiate your fieldwork and begin this writing project is available on Canvas and will be discussed in class well ahead of the deadline.

Comparative Research Project

Using the perspectives and methods of secondary research in legal anthropology, you will design a project that extends one of the central questions we have explored in the semester across two different legal systems. First, you should narrow your intended focus to a research question, which you will elaborate in a short proposal. Next you will find and analyze ethnographic accounts in the academic literature on the topic from both legal systems, as well as primary source materials (public cases, recordings, popular culture, etc.). In presenting your research results, you will write a report of at least eight double-spaced pages presenting your findings in depth and analyzing the significance of this comparison. More guidance for this project will be introduced in the second half of the semester.

Case Presentation

Starting in week three, part of each class meeting will be devoted to a fifteen-minute presentation and Q&A led by one student. After signing up for one of these sessions, you will complete research into a legal case in either a non-U.S. court system or an American case invoking cross-cultural notions of justice and/or competing jurisdictions. You should strive to connect the case in some way to the discussion topic assigned for the date you choose, but such a connection may be only tangential. You will present some of the key facts of the case, and others will respond with questions. These presentations should ideally examine the underlying assumptions within the structure of the legal system itself and how particular actors (plaintiffs, defendants, claimants, judges, juries, prosecutors, third parties, etc.) operate within their own legal culture. You will be evaluated on the basis of the thoroughness of the presentation and your ability to guide our conversation in a productive, engaged way. An equal portion of your grade is reserved for how well you engage with *others'* presentations over the course of the semester; this score will be tentatively calculated halfway through the semester and revised at its conclusion.

CBL Engagement

This semester our class is partnering with the Donelan Office of Community-Based Learning to provide local connections with an organization dedicated to mediating the lived experience of legal systems. At the beginning of the semester, we will meet Anna Rice, an attorney with BAR None, an initiative of Dismas House of Massachusetts that assists people who face barriers to obtaining a sustainable livelihood due to prior criminal records and imprisonment. We will partner with her on projects that expand their work beyond the management of criminal records into the impacts of consumer reports on employment opportunities. You will sign up to assist with a workshop they provide for clients and the organizations that serve them to promote awareness about legal options for obtaining consumer/criminal record reports. Collectively, we will also contribute to a research project to inform future advocacy to reform employer access to such reports. Your participation with BAR None will allow you to apply course concepts to a practical, grassroots-level effort to reduce the impact that lesser-known legal and bureaucratic processes have on the people of Worcester.

Participation and Engagement

Engagement with others throughout the semester is expected as a basic requirement of the course. This class demands active participation, questioning, and response within the small scholarly community we are forming through weekly meetings. A prerequisite to this level of sustained engagement is your presence in the classroom, but physical presence alone is not sufficient to ensure that you will meet these course expectations. This expected level of engagement starts with solid preparation before each meeting so that you will be in a position to contribute to the discussion and, most importantly, ask relevant questions to clarify points of uncertainty that arose as you began your study of the week's written materials. During each case presentation, you will also be expected to pose questions in response to the day's speaker. While you do not have to respond to every presentation, you should contribute regularly enough that it is clear you are an engaged listener and contributor to these presentations, which will constitute a major component of your case presentation evaluation, as described above.

That being said, I understand that outgoing conversation or debate is not a style suited to all learners. Therefore, if you feel you are not able to participate rigorously during class, please let me know so that we can figure out an alternative mode of participation, whether through office hour visits or other activities. Similarly, I realize that unexpected things may come up during the semester (e.g., illness, family concerns, etc.) that may prevent you from attending our meetings. Therefore, I encourage you to come to see me during office hours (or another time by appointment or virtually) to talk about the course content that you missed, which will ensure you do not fall behind and can apply missed content into your written coursework and in future class discussion.

Submitting Written Assignments

All written assignments prepared outside of class should be fully documented with consistent use of a citation style. American anthropologists typically follow the Chicago Manual of Style (author-date version) as a disciplinary convention, and you are welcome to use the same in this course. However, if you are more familiar with another style (e.g., MLA, APA, etc.) and would prefer to use it, you are welcome, as long as you do so consistently. The most important point is that you give clear references to outside texts and ideas you have borrowed, even if the texts have been assigned in class. Resources to help you develop good citation practices are available online at the [library's citation guide](#) and in person at the Writer's Workshop on the second floor of the Dinand Library. You are strongly recommended to visit the Writer's Workshop to improve the quality of your academic writing, especially given the writing-intensive nature of this course. You can [visit their website](#) to schedule a free forty-five-minute appointment, to which you should bring a copy of the assignment and your current draft.

For each day (or portion thereof) that a written assignment is late, your grade will be reduced by one-third of a letter (e.g., from B+ to a B). Extensions are granted *automatically* for circumstances outside your control equal to the number of study days lost, **provided you let me know ahead of the due date**. Do not hesitate to reach out by email if you are having trouble meeting deadlines or other targets. Each essay should be double-spaced and formatted with a reasonably sized font and page margins, with extra space between paragraphs removed. You should also try to produce an original title for each submission (e.g., not simply "Courtroom Ethnography"). Please remember to read through your entire draft at least once before submitting it. If you would like to rewrite an assignment to try for a higher grade, you can always see me during office hours to make individual arrangements and to discuss your plans for revision. In most cases, you may request a grade that is the average of the old and new scores. There are no other opportunities to earn extra credit.

Grading and Evaluation

You will be evaluated based on the quality of your assignments, the degree of improvement throughout the semester, and the value of your participation to our community of inquiry. Each of these components of the course will be weighted as follows in the calculation of your final course grade:

Empirical Sciences before the Court.....	15%
Courtroom Ethnography	25%
Comparative Research Project.....	25%
CBL Engagement.....	15%
Case Presentation (and Questions).....	20%

Your work will be evaluated in each of these categories according to the following scale, which is set by the College:

- A.....Excellent (for exceptional and innovative work)
- A-
- B+
- B.....Good (for thoughtful work that meets expectations)
- B-
- C+
- C.....Satisfactory (for acceptable work)
- C-
- D+
- D.....Low Pass (for poor work)
- F.....Failing Grade

Logistics and Resources:

Course Policies

In order to create the most effective learning environment possible and for the consideration of your fellow students, I ask that we all follow these simple guidelines while in class:

1. Arrive on-time having read the assigned materials and completed any relevant tasks or preparation for that day. The content you are expected to learn will come both from reading and activities completed outside of class time and additional material brought out during lectures and discussions. You will get the most out of the course if you keep up with the workload as you go rather than leaving everything for when assignments are due. In order not to disturb others in the class, you should try to arrive before the completion of our opening ritual.
2. Avoid distractions from electronic devices. This course demands your full presence, undistracted by concerns outside the room, and your time in class won't be worthwhile unless you commit yourself to paying attention to what we are doing. If you are relying on a device during class time for notetaking, you should aim to access only those programs that are immediately relevant to course topics so as not to distract yourself. As a common courtesy, this simple step will also avoid disrupting those around you who will inevitably watch your screens from the periphery.

3. Always have something on which to write notes in front of you. You are free to use whatever medium you prefer, but try to jot down not just what I have to say in class but what your classmates share in discussion, all of which may be used in your assignments (and the notes about which will be invaluable in your studying).
4. Allow for an atmosphere of respectful academic discourse. This course covers potentially controversial social topics on which many people (including me) have strong opinions. Try your best to debate respectfully and sympathetically, even when you disagree with your classmates or with me. We want to allow everyone to express his or her perspective in a supportive yet academically critical setting. You may find it helpful to think of our job as to debate *ideas*, not other people.
5. Ask questions about anything (terms, concepts, history, etc.) you do not know or are unsure of. Even if it seems like a silly question, chances are that other people have the same uncertainty, and you will help others by asking it. This is especially important given the various backgrounds and degrees of familiarity with legal matters that each of us brings to the course. Our collective goal is to learn from one another by asking questions about parts of the world or institutions we may be familiar with.
6. If you have concerns with anything in the course, please see me as soon as possible. Troubles that build over the course of the semester become more difficult to address; it will be much easier to deal with them as early on as possible. I am always available to find a solution that works best for you, regardless of what issues come up.
7. Regularly scheduled office hours are available on a first-come, first-served basis. I will meet with everyone who shows up during my office hours (listed at the top of the syllabus, unless modified by prior email announcement) in order of arrival. If your schedule is limited and you can only meet at a specific time, email me in advance to reserve a spot. You can also send an email to arrange a time outside of my regularly scheduled hours if they don't work for you. I am on campus virtually the entire day on Mondays, Wednesdays, and Fridays.

Intellectual Risk Taking

One of the most important skills we will cultivate this semester is cultivating a habit of making bold moves in your thinking. Practically speaking, boldness entails suggesting alternative ideas that you may not be entirely sure about, exposing them to scrutiny along with your own cherished positions and assumptions. Never be afraid to ask questions, even if you think they are simple or head in a different direction from what we had been discussing. Even in more highly weighted assignments, you are encouraged to think imaginatively and not always worry about having the “correct” position or interpretation. While you should always strive to support your arguments with good evidence, there is value in testing out explanations that may at first seem counterintuitive or speculative.

Students with Disabilities

Any student who feels he or she may need an accommodation based on the impact of a disability should reach out as early in the semester as possible to discuss specific needs. Please contact the Office of Accessibility Services in Hogan Campus Center Room 505 or by phone at 508-793-3693 to coordinate reasonable accommodations.

Academic “Integrity”

All education is a cooperative enterprise between faculty and students. This cooperation requires trust and mutual respect, which are only possible in an environment governed by the principles of academic integrity. As an institution devoted to teaching, learning, and intellectual inquiry, Holy Cross expects all members of the College community to abide by the highest standards of academic integrity. Any violation of academic integrity undermines the student-faculty relationship, thereby wounding the whole community. See the [full academic integrity policy](#) for more details. Academic integrity is important for two reasons. First, independent and original scholarship ensures that students derive the most they can from their educational experience and the pursuit of knowledge. Second, academic misconduct violates the most fundamental values of an intellectual community and arguably diminishes the achievements of others in the community. Accordingly, Holy Cross administrators view academic misconduct as one of the most serious violations of the College’s expectations that a student can commit while under its jurisdiction.

Specific behaviors that constitute academic misconduct may include cheating, fabrication, facilitating academic dishonesty, plagiarism, participation in academically dishonest activities, and unauthorized collaboration/collusion, although it can sometimes be difficult to discern what constitutes “unauthorized” assistance. Like other legal regulations, these restrictions have their own history and are predicated on a certain model of education, which we will consider over the semester as it relates to the creep of “legalistic” frameworks into other domains of life as a means of regulation and social control. If you have questions relative to academic integrity expectations within the context of a particular assignment, don’t hesitate to ask me directly.

Audio Recording

If you feel it is in your best interest to record our conversations as a means to understand/process the ideas introduced in class and share them with wider audiences, you may do so for any use.

Religious Observances

Any student who faces a conflict between the requirements of this course and the observance of his or her religious faith should contact me as early in the semester as possible. In such event, I will provide reasonable and fair accommodations that do not unduly disadvantage you.

Course Schedule:

Unit I: Foundational Perspectives on Law

<i>Week</i>	<i>Date</i>	<i>Reading Due</i>	<i>Assignments Due</i>
Week 1: Why Study Law Anthropologically?	August 30	None	

	September 1	<p>Syllabus</p> <p>If you have never taken an anthropology course before: Katie Nelson and Lara Braff, <i>Perspectives: An Open Introduction to Cultural Anthropology</i></p> <p>OR</p> <p>If you have taken an anthropology course before: Prepare three or four key points that define an anthropological approach and be prepared to share in class</p>	
Week 2: Natural Law	September 6	Thomas Aquinas, <i>Summa Theologiae</i> , "Treatise on Law"	
	September 8	<p>Lawrence Rosen, <i>Law as Culture</i>, Preface and Introduction</p> <p>Elizabeth Asmis, "Cicero on Natural Law and the Laws of the State"</p> <p>S. Adam Seagrave, "Cicero, Aquinas, and Contemporary Issues in Natural Law Theory" (<i>optional</i>)</p>	
Week 3: The Evolution of Law	September 13	<p>Charles-Louis Montesquieu, <i>The Spirit of the Laws</i></p> <p>Joshua Bandoch, "Montesquieu's Selective Religious Intolerance in <i>Of the Spirit of the Laws</i>"</p>	
	September 15	<p>Friedrich Engels, <i>The Origin of the Family, Private Property and the State</i></p> <p>Lewis Henry Morgan, <i>Ancient Society</i></p>	
Week 4: Legal Fictions and Legal Realism	September 20	<p>Henry Maine, <i>Ancient Law</i></p> <p>Leo Coleman, "Corporate Identity in <i>Citizens United</i>: Legal Fictions and Anthropological Theory"</p> <p>Peter Kurie, <i>In Chocolate We Trust: The Hershey Company Town Unwrapped</i></p>	

	September 22	Oliver Wendell Holmes, Jr., <i>The Common Law</i> Lawrence Rosen, <i>Law as Culture</i> , “Law and Social Control”	
Week 5: Customary Law	September 27	Jean G. Zorn, “Custom and/or Law in Papua New Guinea” E. Adamson Hoebel, <i>The Law of Primitive Man: A Study in Comparative Legal Dynamics</i>	
	September 29	Elizabeth Colson, “Social Control and Vengeance in Plateau Tonga Society”	Empirical Research before the Court

Unit II: Law and Culture

Week 6: Dispute Resolution	October 4	Paul Bohannan, <i>Justice and Judgment among the Tiv</i> John Comaroff and Simon Roberts, <i>Rules and Processes: The Cultural Logic of Dispute in an African Context</i> Barbara Yngvesson, “Making Law at the Doorway: The Clerk, the Court, and the Construction of Community in a New England Town”	
	October 6	Susanne Verheul, “Rotten Row is Rotten to the Core”: The Material and Sensory Politics of Harare’s Magistrates’ Courts after 2000” Darryl Li, “How to Read a Case: Ethnographic Lawyering, Conspiracy, and the Origins of Al Qaeda”	
Week 7: Religion and Authority	October 18	Kate Ramsey, <i>The Spirits and the Law</i> , Introduction and Chapter 1 Lawrence Rosen, <i>Law as Culture</i> , “Law as Cosmology”	

	October 20	Kate Ramsey, <i>The Spirits and the Law</i> , Chapter 2 Sally Engle Merry, “Rights, Religion and Community: Approaches to Violence against Women in the Context of Globalization”	
Week 8: Evidence and Epistemology	October 25	Clifford Geertz, “Fact and Law in Comparative Perspective” Lawrence Rosen, <i>Law as Culture</i> , “Creating Facts”	
	October 27	Charles Goodwin, “Professional Vision”	Courtroom Ethnography
Week 9: Crime and Criminalization	November 1	Jean Comaroff and John Comaroff, <i>The Truth about Crime</i> Lawrence Rosen, <i>Law as Culture</i> , “Reason, Power, Law”	
	November 3	Chris Herring, Dilara Yarbrough, and Lisa Marie Alatorre, “Pervasive Penalty: How the Criminalization of Poverty Perpetuates Homelessness”	
Week 10: Police and Agents of the State	November 8	Didier Fassin, <i>Enforcing Order: An Ethnography of Urban Policing</i>	
	November 10	Kathryn Takabvirwa, “Citizens in Uniform: Roadblocks and the Policing of Everyday Life in Zimbabwe” Caitlin E. Fouratt, “Temporary Measures: The Production of Illegality in Costa Rican Immigration Law”	Comparative Research Project – Proposal

Unit III: Law beyond the State

Week 11: Human Rights and International Law	November 15	Leigh Swigart, “Now You See It, Now You Don’t: Culture at the International Criminal Court” Dorothy Hodgson, <i>Gender, Justice, and the Problem of Culture: From Customary Law to Human Rights in Tanzania</i>	
	November 17	Richard A. Wilson, “Human Rights and Nation-Building”	
Week 12: Legal Ideologies	November 29	Carol J. Greenhouse, “Courting Difference: Issues of Interpretation and Comparison in the Study of Legal Ideologies” (skim) David M. Engel, “The Oven Bird’s Song: Insiders, Outsiders, and Personal Injuries in an American Community”	
	December 1	Hannah Appel, <i>The Licit Life of Capitalism</i> Kate Ramsey, <i>The Spirits and the Law</i> , Chapter 3	Comparative Research Project – Paper
Week 13: Global Capitalism in the Postcolony	December 6	Douglas Bafford, “Who Gets to Own Land?” Peter Geschiere, “Witchcraft and the Limits of the Law: Cameroon and South Africa”	
	December 8	Kate Ramsey, <i>The Spirits and the Law</i> , Chapter 4 and Epilogue Lawrence Rosen, <i>Law as Culture</i> , Conclusion	

*****NB: This schedule and syllabus are subject to change as we move through the semester.*****

Source for image on first page: [Will Bullas, Kangaroo Court \(2014\)](#)