

AN INTERNATIONAL COURSE ON LEGAL PLURALISM
10-12 DECEMBER 2015
INDIAN INSTITUTE OF TECHNOLOGY, BOMBAY

Meeting Location: Van Vihar Guest House, Conference Room

Course Materials:

Required/Suggested Readings, the Course Program, participant bios, and a copy of the course venue map can be found at:
<https://www.dropbox.com/sh/vjye2580w52t1ko/AADH62ce0ngcbY8jRQOOofaiha?dl=0>

Thursday, December 10, 2015

8:30-9.00 Registration

9:00-10.00 Welcome and introduction to the course.

Round of introductions of teachers and participants, Yüksel Sezgin & Maarten Bavinck

10:00-10.30 TEA BREAK

10.30-12:00

Session I: INTRODUCTION TO THE CONCEPT OF LEGAL PLURALISM

Instructor: Keebet von Benda-Beckmann

Description: The term legal pluralism has acquired a broad array of meanings, including both normative and analytical understandings. The introduction will be used to discuss how the concept was first used in (post)-colonial contexts to understand the overlapping and incommensurate types of law with which local populations were and are confronted when pursuing their social, economic, religious, and political life. The introduction will discuss some of the major dimensions by which legal orders differ from each other. And we will discuss how conditions of strong power imbalances affect how the problem of incommensurability of legal concepts is dealt with. The concept of legal pluralism also allows for an inquiry into the ways in which legal orders become intertwined and how this generates hybrid legal forms.

Over time it became clear that legal pluralism is a far more general condition and that it can be found all over the world, including western countries. The increase in international and transnational law, large scale migration, and the globalization of production, science, technology, and communication has added a transnational dimension to the national and sub-national dimensions of legal pluralism. We will see that an analytical concept of legal pluralism allows one to analyze the relative importance of each of the component parts of plural legal orders at particular

places and in particular social settings where specific persons draw upon these orders in interaction with each other. Such a perspective also points to the at times surprisingly resilient power of customary laws. It shows that the claims of universality of both secular and religious international law, or of national sovereignty of national laws can be questioned rather than taken for granted. If we pay attention to the spatial and temporal dimensions of law we can see that an increase in overlapping spaces regulated by special legal regimes and the spectacular rise of regulation in general generates very fragmented, flexible and complex legal (sub)regimes. These regimes show less rather than more cohesion and that can also affect some of the relatively stable parts of plural legal orders.

Required Readings: Benda-Beckmann (2002), Berman (2014)

12:00-1:30 PM LUNCH

1:30-3:00 PM

Session II: LAND TENURE AND CUSTOMARY LAW

Instructor: Janine Ubink

Description: This session discusses customary land tenure issues. In many developing countries a large part of the land arsenal is held under customary tenure. It has for many years been debated, both by researchers, policymakers and development practitioners, what impact customary tenure has on, among others, productivity, willingness to invest, social harmony, equality, and sustainability, and whether a different system of tenure, viz. individual titling and registration, would have positive impact in these areas. In this session we will analyze the pros and cons of customary land tenure versus individual titling and registration (ITR). Participants will debate these pros and cons from the literature as well as from their own (research and policy) experience (if any) in small groups and then report back in a plenary session.

Required Readings: Ubink (2007), Coldham (1979), De Soto (2001)

3:00-3:30 PM TEA BREAK

3:30-5:00 PM

Session III: LEGAL PLURALISM, KNOWLEDGE REGIMES, SCIENCE, AND TECHNOLOGY

Instructor: Bertram Turner

Description: Today, scientific and technological change as well as new forms of knowledge regimes seem to challenge existing legal orders and legal institutions to an extent never experienced before. Global governance institutions and epistemic communities are increasingly involved in legislative processes

addressing the transfer of technology and science and monitoring the effects that technological innovation may entail in various settings. At the same time technological innovation and knowledge production prove to continuously involve normative processes that account for their own inherent logics and combine with the social, the political, the religious and the economic.

Aim of this course session is to argue the case for an integration of the concept of Legal Pluralism (LP) as an analytical tool in the field of Science and Technology Studies (STS). For the time being, research in L-STs mostly concentrates on the law of the state and the legal templates produced by institutions of the global governance. A more sophisticated look at complex legal configurations was not at the forefront in legal reasoning within the field combining STS with the law. This is exactly the empty space where the course session wants to come in. Referring to specific fields of LP-STs entanglements and based on empirical examples, it seeks to explore in what way the intersection of law, science, and technology takes effect in plural legal configurations and how they are interlinked with processes of law production at various scales.

Required Readings: Jasanoff (2008), Valverde (2003)

Friday, December 11, 2015

8.30-10:00

Session I: RELIGION, LAW AND LEGAL PLURALISM

Instructor: Werner Menski

Description: Given that the sessions are supposed to be mainly interactive, this complex and of course highly politicized topic will need to build on participants' perspectives, knowledge and experience, supplemented by advance reading of two core texts and a brief powerpoint presentation by the instructor.

The inability to disentangle religion and law in lived experience and in the wider context of legal pluralism suggests that the discussions should focus on the connections, and thus on the conflicts that arise, in theory and in practice, when religious claims encounter legal structures, and vice versa.

The initial, more theoretical section will seek to ascertain that the complexity of legal pluralism is appreciated by the participants and that we do not miss out anything and avoid engaging in 'partial theorizing' that then leads to practical problems in lived reality and denial of justice on the basis of some -ism, including pluralism. This discussion will also need to account for a pluralist grammar of justice and will probably emphasize the skills needed to balance competing perspectives and expectations.

The major part of this session will then be spent in practice-focused analysis of case scenarios that involve questions of law and religion. These are taken from different jurisdictions, mainly India, other parts of South Asia, and the UK.

Required Readings: Woodman (2008), Williams (2008)

10:00-10:30 TEA BREAK

10.30-12:00

Session II: LEGAL PLURALISM IN ACTION: THE CASE OF KURDISH DISPUTE RESOLUTION PRACTICES FROM OTTOMAN MILLET SYSTEM TO DIASPORA

Instructor: Latif Tas

Description: The use of multiple legal practices based on diverse normative perceptions increasingly challenges state law. In Europe, this issue has become especially visible in the on-going discussions about shari‘a courts. Although these discussions are often vigorous, there is still very limited research about the practical implications of ‘unofficial’ non-state and secular legal systems. This lecture focuses on multiple laws, especially alternative secular laws, and the limit of state law in the case of Kurdish alternative dispute resolution practices in Turkey and the diaspora. By analyzing the case of Kurdish dispute resolution practices, we will try to answer the following questions: (1) Why multiple laws? (2) How and why do some communities, such as Kurds, continue to follow their own legal solutions rather than the state legal system? (3) How would you describe the relationship between Kurdish communities and the state historically in the Middle East, from the Ottoman Millet System to the present day? (4) What are the limitations for individuals using unofficial legal practices? (5) When are the alternative legal practices effective? (6) When are they less so? (7) What are the reasons for these kinds of alternative community laws? (8) What are the main methodological challenges for conducting this type of research that focuses on legal practices within close-knit communities?

Required Readings: Tas (2013), Tas (2014)

12:00-1:30 PM LUNCH

1:30-3:00 PM

Session III: NAVIGATING COMPLEX PATTERNS OF LEGAL PLURALISM IN THE FISHERIES OF THE PALK BAY, SOUTH ASIA

Instructor: Maarten Bavinck

Description: Students will have the opportunity to participate in mock negotiations over access to and use of marine waters in the Palk Bay, a sea area that is located between India and Sri Lanka. This area has been plagued by

conflicts between fishers from the two countries, and is also considered to be overfished. The fact that it is crisscrossed by an international boundary line impedes the development of a governance framework. As is the case in many ex-colonial countries, legal pluralism with regard to natural resource regulation in South Asia is rooted in the imposition of colonial law. In this region, there is still strong evidence of customary fisher law (particularly with regard to small-scale fishing), as well as newly developed fisher law (around the trawler fishery). International law (such as with regard to marine conservation and Illegal, Unreported and Unregulated fisheries) is also making an impact, however. Then, military agencies play an important role on both sides. Finally, fishers have to take account of state fisheries legislation in India and Sri Lanka. The exercise will allow participants to address the following questions:

- What principles or values should underlie access to natural resources? Economic efficiency? Equity? Sustainability? Historical precedence? International law?
- What role should local communities play in managing adjacent resources?
- Where conflicting claims to the same resources are supported by alternative legal conceptions and principles, how can these be adjudicated? Through the court system? Political negotiation? Independent arbitration?

Required Readings: Bavinck et al. (2014); Suggested: Scholtens et al. (2012), Menon et al. (2015)

3:00-3:30 PM TEA BREAK

3:30-5:00 PM

Session IV: LEGAL PLURALISM AND ACCESS TO JUSTICE IN THE SOUTH PACIFIC

Instructor: Jennifer Corrin

Description: Access to justice in the plural legal regimes of Small Island Developing States (SIDS) in the Pacific is often severely limited. There are a number of diverse reasons for this, spanning from lack of resources and logistical difficulties to failure to take into account the issues arising from legal and social pluralism. A particular difficulty arises from the plurality of dispute resolution forums. At one end of the spectrum, disputes may be dealt with in the State courts. At the other, they may be dealt with in a customary forum at the village or community level. In between these two extremes, a third possibility exists in some Pacific SIDS where ‘courts’ have been set up by the State specifically to deal with customary disputes, purportedly in accordance with custom. In some instances, there is a fourth alternative, where attempts have been made to integrate customary dispute resolution mechanisms into the State system. This paper examines the avenues for dispute resolution in Pacific SIDS, drawing examples mainly from Solomon Islands, but with reference to neighboring countries in the region. It explores the barriers arising from and surrounding this plurality which

hinder access to justice. It also puts forward some suggestions for overcoming them.

Required Reading: Goddard (2010), PRI (2001)

Saturday, December 12, 2015

8:30-10:00

Session I: CONDUCTING ETHNOGRAPHIC RESEARCH

Instructor: Gopika Solanki

Description: The session will encourage students to think about the advantages and limitations of ethnographic research. We will, in particular, focus on research practice in the field. We will discuss data collection strategies and highlight theoretical, moral, political, inter-personal, and ethical dilemmas, questions, engagements, and challenges that are integral to fieldwork. We will end with some reflections on the politics of knowledge and representation.

Required Readings: Scheper-Huges (1995), Kidder (2002)

10:00-10:30 TEA BREAK

10:30-12:00

Session II: THE ILLUSION OF CONSTITUTIONAL PLURALISM IN THE AGE OF MANUFACTURED ('POST CONFLICT') CONSTITUTION MAKING

Instructor: Katrin Seidel

Description: The focus of this session will be on constitution making in light of legal plurality, particularly on the effects of norm transfer from hegemonic centres of 'rule of law' technicity to war torn contexts such as South Sudan and Somaliland. We want to explore how transnational actors brings in manifold models of how a constitution should be produced and ask whether those toolboxes rather regulate constitution making in a way that risks the chances of integrating ideas and interests of the plural societies. Moreover, how do the actors involved negotiate and translate the plurality of normative ideas and interests into practice? How do various actors try to leverage the international involvement? Who are the local and the international beneficiaries?, etc. In looking at how constitutions are made - through processes of negotiations and translations - we seek to better understand how legal pluralities are addressed and dealt with in the process, and

how common narratives such as ‘rule of law’ or the ‘supreme law of the land’ become driving forces for legal interventions.

Required Readings: Grenfell (2013), Seidel & Sureau (2015)

12:00-1:30 PM LUNCH

1:30-3:00 PM

Session III: CONTEXTUALISING LEGAL PLURALISM: IMPLICATIONS FOR GENDER, CULTURE AND FREEDOM OF RELIGION

Instructor: Waheeda Amien

Description: Through the example of personal and family laws, this lecture will demonstrate how official and unofficial forms of plural legal systems exist in multicultural, multiethnic, multilingual and multireligious societies, the extent to which the legislature and judiciary in those societies have attempted to accommodate the existence of plural legal systems and the human rights implications that arise from their legal plurality, especially the relationship between culture, religion and women's right to equality. The lecture will focus on South Africa as a case study, since its Constitution pays homage to its multivariied nature by recognising the individual and collective rights to culture and religion, by recognising customary law as having equal status to common law, and by enabling the South African government to enact legislation to recognise traditional and religious marriages and/or personal law systems. Consideration will also be given to how the judiciary and legislature are managing the possible tension between the aforementioned constitutional framework and the doctrine of religious non-entanglement, which currently binds the South African judiciary.

Required Readings: Amien (2013a), Amien (2013b)

3:00-3:30 PM TEA BREAK

3:30-5PM: Reflections and Closing Remarks (led by Yüksel Sezgin)