Law 6936 Law and Anthropology Prof. Paul J. Magnarella

Sect. #18BH Spring 2019

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Office Hours: Tue. 1:00 - 2:30 & by appointment

Class: Tue. 3:00-4:40 in Rm HH 285D

The first class meets on Jan. 8, 2018. See reading assignment below.

Course description

In this seminar, we will assume a balanced reciprocity between Law and Anthropology, wherein neither is independent of nor subordinate to the other. Some of the topics to be examined and discussed include: 1) the nature of law in societies characterized by differing levels of socio-political-economic complexity; 2) the impacts of Western influences on non-Western law; 3) legal pluralism/semi-autonomous socio-cultural-legal fields; 4) the proposition that a universal human nature influences legal developments (especially human rights law) cross-culturally.

Course goals

Students who complete the assigned readings and engage in class discussions should be able to explain how various socio-cultural and econo-political arrangements (including international contacts and pressures) may influence a society’s legal system.

They should also be able to discuss intelligently the four broad topics listed above.

Class attendance & participation policy:

The seminar’s success as a stimulating learning experience will depend on students coming to class having already done the week’s assigned readings and being able to discuss them. Stimulating ideas will be rewarded. Students should be on time and stay until the end of class. Attendance will be taken; students are responsible for ensuring that they are not recorded as absent if they come in late. Your final grade in the course may be lowered one level (e.g. B to B-) for each unexcused absence. If you miss a class, you are responsible for finding out what you missed, handing in assignments on time, and obtaining any handouts or assignments. A student who misses more than two classes will be dropped from the course. The law school’s policy on attendance can be found at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#3>.

ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. It is anticipated that you will spend approximately 2 hours out of class reading and/or preparing for in class assignments for every 1 hour in class.

Writing Requirement and Oral Presentations

All students must participate in class discussions based on their previous reading of the assigned material. Be ready to lead discussion if called on to do so.

In addition, students may choose from two sets of requirements.

1) A written research paper on a topic approved by the professor and an oral presentation of the research topic to the class. Students may use this seminar to meet the advanced writing requirement for the J.D. The general standard for fulfilling this requirement is a quality paper of at least 25 pages of double-spaced,12-point text submitted in hardcopy.

Students choosing this option, must submit (in hard copy) a one or more page description of their intended research paper with a list of at least five major sources, with their complete references, including author, title, etc. Due in class on Feb. 19. Completed papers (in hard copy) are due Tue. April 23, 2017.

2) Four to five page summaries of seven assigned readings marked with an asterisk (see below). Each summary must cover the reading’s key points and include a discussion question for the class on a topic relative to the assigned reading. Students may submit no more than one summary a week. In addition, each student must give an oral presentation on at least two of the chosen readings. Each summary must be submitted in class (in hard, printed copy) on the day the reading assignment is scheduled. On Jan. 15 students should be ready to indicate which seven readings they plan to review.

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

Grades: A student’s final grade will be based on: 1) the quality of the research paper submitted or seven summary papers (70%); 2) the oral presentation(s) (10%); and 3) attendance and contributory participation in class discussions (20%). General information on grading policy can be found at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

Materials. This seminar will utilize a Westlaw TWEN site. Students should sign on to this site, using their ufl.edu email address, which will be employed to communicate with them throughout the semester. Links for many of the assigned readings are available in the “Course Materials/Assignments” section of the TWEN site. Students should expect to devote approximately 2 hours out of class reading and/or preparing for in class assignments for every 1 hour in class.

Accommodations for Students with Disabilities. Students requesting classroom accommodation must first register with the Office of Disability Resources (352-392-8565; www.dso.ufl.edu/drc/) The UF Office of Disability Resources will provide documentation to the student who must then provide this documentation to the Law School Office of Student Affairs when requesting accommodation.

Towards the end of the semester students will have the opportunity to evaluate this course online at: https://evaluations.ufl.edu

The only Required Text is:

Walter O. Weyrauch (ed.), *Gypsy Law*. Berkeley, CA: U of Cal. Press, 2001.

Order of Readings/Discussions

Jan. 8 – “Concepts of Law; Approaches to Study of Law and Society” by PJ Magnarella

“Legal Anthropology: A Backward Glimpse,” by PJ Magnarella.

The above two readings are available on Twen.

“Legal Anthropology Comes Home: A Brief History of the Ethnographic Study of Law,” by John M. Conley and William M. O'Barr. Available at <http://digitalcommons.lmu.edu/llr/vol27/iss1/4>

Jan. 15 - Historic foundations and the processual approach. Notification of choice of seven readings to review due.

“Two Works of Karl Llewellyn” (with Adamson Hoebel)

*Modern Law Review* v. 31 (1968).

<http://onlinelibrary.wiley.com/doi/10.1111/j.1468-2230.1968.tb01181.x/pdf>

Reflection on John Griffiths's *What is sociology of law?* Available on TWEN

Jan. 22 – Comparative Approaches

\*PJ Magnarella, “Law Prior to the Modern State,” Available on TWEN site.

\*PJ Magnarella, “The Comparative Constitutional Law Enterprise,” 30 *Willamette Law Review* 509 (1994).

PJ Magnarella, “Universalism vs Relativism,” Ch. 3 of *Human Rights in Our Time* (2011). Available on TWEN.

Jan.29 – Legal Pluralism

\*[André Hoekema](http://www.tandfonline.com.lp.hscl.ufl.edu/author/Hoekema%2C+Andr%C3%A9), **The conundrum of cross-cultural understanding in the practice of law.** [The Journal of Legal Pluralism and Unofficial Law](http://www.tandfonline.com.lp.hscl.ufl.edu/toc/rjlp20/current)

Volume 49, 2017 - [Issue 1](http://www.tandfonline.com.lp.hscl.ufl.edu/toc/rjlp20/49/1) pp. 67-84

Available at: <http://dx.doi.org.lp.hscl.ufl.edu/10.1080/07329113.2017.1310446>

\*Sally Falk Moore, “Semi-autonomous social fields,” *Law and Society Review*, vol. 7 (1972). Available at: <https://ay14-15.moodle.wisc.edu/prod/pluginfile.php/127501/mod_resource/content/1/Merry%20Legal%20Pluralism.pdf>

Feb. 5 – Legal Pluralism continued

\*PJ Magnarella, “Justice in a Culturally Pluralistic Society: The Cultural Defense on Trial,” *Journal of Ethnic Studies*, v. 19, n. 3 (1991) pp. 65-84. (Available on TWEN site)

….\*Latif Taş, One state, plural options: Kurds in the UK. The Journal of Legal Pluralism and Unofficial Law. Volume 45, 2013 - [Issue 2](http://www.tandfonline.com.lp.hscl.ufl.edu/toc/rjlp20/45/2), pp. 167-189.

Available at: <http://dx.doi.org.lp.hscl.ufl.edu/10.1080/07329113.2013.781445>

Feb. 12 – Legal Pluralism continued

Walter O. Weyrauch (ed.), *Gypsy Law*. Berkeley, CA: U of Cal. Press. In this book, read the following chapters.

Ian Hancock, “A Glossary of Romani Terms,” pp. 170-187.

\*Weyrauch and Maureen Anne Bell, “Autonomous Lawmaking: The Case of the ‘Gypsies,’” pp. 11-55.

\*Susan Caffrey and Gary Mundi, “Informal Systems of Justice…” pp. 101-116.

Feb. 19 – Legal Pluralism continued (Research paper descriptions and complete references to major sources due)

In the *Gypsy Law* book listed above, read the following two chapters:

Marti Gronfors, “Institutional Non-Marriage in the Finnish Roma Community…” pp. 149-169.

\*Anne Sutherland, “Complexities of U.S. Law and Gypsy Identity,” pp. 231-242.

Also read:

\**Handyside* and *Lautsi* cases in *Human Rights in Our Time* (2011) Available on TWEN site.

Feb. 26 - Legal Pluralism continued:

[Rustamjon Urinboyev](https://www-tandfonline-com.lp.hscl.ufl.edu/author/Urinboyev%2C+Rustamjon) & [Måns Svensson](https://www-tandfonline-com.lp.hscl.ufl.edu/author/Svensson%2C+M%C3%A5ns), “Living law, legal pluralism, and corruption in post-Soviet Uzbekistan,” [*The Journal of Legal Pluralism and Unofficial Law*](https://www-tandfonline-com.lp.hscl.ufl.edu/toc/rjlp20/current) ,Volume 45, 2013 - [Issue 3](https://www-tandfonline-com.lp.hscl.ufl.edu/toc/rjlp20/45/3). Available on TWEN site.

\**Wisconsin v. Yoder* 406 US 205 (decided 1972). (Click on ‘Original image…’(pdf)

\*Sylvia Vatuk, The “women’s court” in India: an alternative dispute resolution body for women in distress**.** [The Journal of Legal Pluralism and Unofficial Law](http://www.tandfonline.com.lp.hscl.ufl.edu/toc/rjlp20/current)

Volume 45, 2013 - [Issue 1](http://www.tandfonline.com.lp.hscl.ufl.edu/toc/rjlp20/45/1) pp. 76-103

Available at:| <http://dx.doi.org.lp.hscl.ufl.edu/10.1080/07329113.2013.774836>PJ

March 5 – Spring Break

March 12 – Western Influence on non-Western law.

\*PJ Magnarella, “East Meets West: The Reception of West European Law in the Ottoman Empire and the Modern Turkish Republic,” *Journal of International Law and Practice*, vol. 2, pp. 285-306 (1993). Go to: HeinOnline.org > Law Journal Library > J > Journal of International Law and Practice > 1993 > scroll down in the table of contents to p 285

<http://heinonline.org/HOL/Page?handle=hein.journals/mistjintl2&id=1&size=2&collection=journals&index=journals/mistjintl>

\* The Otieno Case: African Customary Law versus Western Jurisprudence,

16 *S.U. L. Rev*. 231 (1989). Available on Lexis-Nexis and on TWEN site.

March 19 – Western vs. Indigenous Law

\*EG Unsworth, “C[onflict of Laws in Africa](http://scholar.google.com/scholar_url?url=http%3A%2F%2Fwww.africabib.org%2Frec.php%3FRID%3D18321529X&hl=en&sa=T&ct=res&cd=0&ei=sPUcWOr2C4LrjAGJvKuYAQ&scisig=AAGBfm0gsVsW3PtavfvYxx47lY2nRkNv8g&nossl=1&ws=911x373),” *Rhodes-Livingstone Journal*, 2 (1944), 49-55. Available on TWEN site.

Three Cases: Pakistan, Tanzania, Zimbabwe (Available on TWEN site)

March 2=6 – Human Rights

\*PJ Magnarella. *Human Rights in Our Time*, Ch. 1, Human Rights an Overview, pp. 7-23. Available on TWEN.

K. Feriali, “Law: Where did Sociobiology Stand?” Available on TWEN

PJ Magnarella, “Anthropology, Human Rights, and Justice,” *International Journal of Anthropology* v. 9, n. 1, pp. 3-7 (1994). Available on Twen.

April 2 – Human Rights Continued.

\*PJ Magnarella, “The Evolving Rights of Self-determination of Indigenous Peoples,” *St. Thomas Law Review*, v. 14, n. 2, pp. 425-447 (2001). Available on Lexis-Nexis.

PJ Magnarella, “UN Indigenous Peoples Resolution” (On TWEN site)

Student Reports begin

April 9 – Student Reports

April 16 – (Final class) Student Reports

April 23 – Research papers due.