



ANTHROPOLOGY OF LAW

COURSE INFORMATION

Faculty: Professor Armando Marques Guedes

Academic Year: 2015-2016 / 2nd semester

Teaching Hours: 3 (week) / 4 ECTS

PROGRAMME AND BIBLIOGRAPHY

[W]e believe that comparative study can aid us in our more parochial task of understanding the law itself. We think we can understand our own “England” better by having visited other shores, and we are confident that others can benefit from the same experience.

J. M. Balkin (1991), “Law, Music, and other Performing Arts” 4, University of Pennsylvania Law Review: 6.

GENERAL INTRODUCTION

The nature and evolution of anthropological studies of both law and politics. The diversity of the sociocultural frameworks of norms and of organizational forms associated with them. The circumscription of the social contexts of legal and political processes. Ethnographic variation in the normative discourses of political-administrative systems. Specifics of the Portuguese case: kinship networks, patron-client relations, inheritance rules and social stratification, the legal-political construction of marginality.

Recommended bibliography:

Armando Marques Guedes (2003), "Law as Culture?", in *Feelings of Justice in the Chinese community of Macao* (ed. A. Hespanha): 27-48, Instituto de Ciências Sociais e Fundação Oriente, Lisboa.

Armando Marques Guedes (2005), *Entre Factos e Razões. Contextos e Enquadramentos da Antropologia Jurídica*, Almedina, Coimbra.

Armando Marques Guedes (2008), "Uma articulação entre o Estado e as 'Autoridades Tradicionais'? Limites na congruência entre o Direito do Estado e os Direitos 'Tradicionais' em Angola", em (ed.) Diogo Freitas do Amaral, *Estudos Comemorativos dos 10 anos da Faculdade de Direito da Universidade Nova de Lisboa*, vol. 1: 715-753, Almedina, Coimbra.

Armando Marques Guedes (2009), "Can 'traditional authorities' and a democratic State co-exist in Angola?", *Politica Internationala*, Bucuresti, Romania.

DOMAIN CIRCUMSCRIPTIONS IN THE ANTHROPOLOGICAL STUDY OF LAW AND POLITICS: THE 'CLASSICAL' TRADITION (1)

A general introduction to some of the basic coordinates of the foundational heuristics of the anthropological perspectives on law and politics. The creative and repressive role of law and politics. Law and social evolution. The social role of conflicts.

Maine, H. (1861), *Ancient Law*, London.

Durkheim, E., (1902), *De la division du travail social*, Paris.

Malinowski, B. (1982, original 1926), *Crime and Custom in Savage Society*, Rowman & Littlefield, New York.

Radcliffe-Brown, A. R. (1933), "Law, Primitive", em *Encyclopaedia of the Social Sciences*, vol. 9: 202-206, New York.

Weber, M. (1968, original 1921), *Economy and Society*, Berkeley and Los Angeles.

Gluckman, M. (1965), *Politics, Law and Religion in Tribal Society*, London.

Pospisil, L. (1967). "Legal levels and multiplicity of legal systems in human societies", *The Journal of Conflict Resolution* 9(1): 2-26.

——— (1974), *Anthropology of Law: a comparative theory*, Yale University Press.

Roberts, S. (1979), *Order and dispute: an introduction to legal anthropology*, Penguin, London.

(eds.) **Armando Marques Guedes** and **Maria José Lopes** (2007), *State and Traditional Law in Angola and Mozambique*, University of Leiden and Almedina.

HEAD-HUNTING AND PEACE-PACTS: SOME OF THE DIMENSIONS OF INTERPRETATION AND EXPLANATION IN ANTHROPOLOGY (2)

In the context of a practice endemic within a cultural área (headhunting in Southeast Asia), this session breaks up various convergent analytical strands w that enhance its intelligibility. The role of interpretation and the structure of anthropological explanations. The social place of the legal and the political. The observer, the observer, and observation.

Vayda, A. P. (1969), "The study of the causes of war, with special reference to headhunting raids in Borneo", *Ethnohistory* 16:221-224.

McKinley, R. (1976), "Human and proud of it! A structural treatment of headhunting rites and the social definition of enemies", em *Studies in Borneo Societies*, (ed) G. N. Appell, I. Dekalb: CSEAS, NTU: 92-126.

Needham, R. (1976), "Skulls and causality", *Man*: 71-88.

Freedman, D. (1979), "Severed heads that germinate", em *Fantasy and Symbol. Studies in Anthropological Interpretation*, (ed.) R. H. Hook, 233-246: Academic Press.

Rosaldo, M. (1980), *Knowledge and Passion. Ilongot notions of self and social life*, conclusão, 221-234: Cambridge University Press.

Metcalf, P. (1982), *A Borneo Journey into Death. Berawan eschatology from its rituals*, cap. 7, 112-126: University of Pennsylvania Press.

Hoskins, J. (1996), "Introduction: headhunting as practice and as trope", em *Headhunting and the Social Imagination in Southeast Asia*, (ed.) J. Hoskins, 1-50: Standford University Press.

McWilliam (1996), "Severed heads that germinate the State: history, politics and headhunting in southwest Timor", *ibid*: 127-167.

THE 'JURAL' AND THE 'POLITICAL': A CONTROVERSY ON THE FOUNDATIONS OF THE COMPARATIVE METHOD (3)

A classic controversy within the Anthropology of Law. A simple extrapolation onto other cultures and societies of Western legal concepts as the grids? Eventually local concepts and systems? The limits of analyst-imposed conceptualizations. Models as concerns data constraints.

Bohannon, P. (1965), "The differing realms of the law", em (ed.) L. Nader, *The Ethnography of Law, American Anthropologist*, special publication 67(6) part 2: 33:42.

Gluckman, M. (1964) "Concepts in the comparative study of tribal law", em (ed.) L. Nader *Law in Culture and Society*: 349-374, University of California Press.

Bohannon, P. (1969), "Ethnography and Comparison in Legal Anthropology", *ibid*: 401-419.

ON THE NATURE OF THE LEGAL AND THE POLITICAL. RECENT ANTHROPOLOGICAL PERSPECTIVES (4)

By means of a discussion of some recent research Works, an initial illustration of a few of the contemporary anthropological comparative takes on the nature and traits of legal and political facts. The accent is placed on the delimitation of these and on the specificity of Anthropology insofar as the generation of innovative analyses is concerned.

Bowen, J. R. (1989), "Poetic duels and political change in the Gayo highlands of Sumatra", *American Anthropologist* 91 (1): 25-41.

Blok, A. (1989), "The symbolic vocabulary of public executions", em (ed.) J. Starr e J. Collier *History and Power on the study of the law. New directions in legal anthropology*: 31-55, Cornell University Press.

Strathern, M. (1992), *Reproducing the Future. Anthropology, kinship and the new reproductive technologies*: 14-30, 44-64, Manchester University Press.

- Schieffelin**, E. L. (1995), "Early contact as Drama and Manipulation in the southern highlands of Papua New Guinea: pacification as the structure of the conjuncture", *Comparative Studies in Society and History* 37 (3): 555-580.
- Caplan**, P. (1995), "Introduction: anthropology and the study of disputes", em (ed.) P. Caplan *Understanding Disputes. The politics of argument*: 1-11, Berg.
- Svensson**, T. G. (1997), "The court as an arena and the issue of ethnicity", em *The Sámi and their Land. The Sámi vs. the Swedish Crown*: 43-73, Novus forlag, University of Oslo.
- Cunha**, M. I. (1997), "Le temps suspendu. Rythme et durée dans une prison portugaise", *Terrains*: 59-68.
- (2002), "Do tráfico retalhista em Portugal: as redes da semi-periferia" *Themis. Revista da Faculdade de Direito da UNL* 4, Lisboa.
- Marques Guedes**, A. (2003), "Law as culture?", em (ed.) A. Hespanha, *Feelings of Justice in the Chinese community of Macau*, Instituto de Ciências Sociais, Lisboa.
- (2005), *Entre Factos e Razões. Contextos e Enquadramentos da Antropologia Jurídica*, Almedina, Coimbra.
- (ed.) **Marques Guedes**, A. (2007), *O semi-presidencialismo e o controlo da constitucionalidade na África lusófona*, Ministério dos Negócios Estrangeiros.
- Sousa Santos**, Boaventura (2003), "O Estado heterogéneo e o pluralismo jurídico", in : 47-97 *Conflito e Transformação Social. Uma Paisagem das Justiças em Moçambique*: introdução.

ORDER, TAXONOMIC CATEGORIES AND CLASSES, ANOMALIES: TABOOS AND PROHIBITIONS AS OUTCOMES OF CLASSIFYING (5)

A session on the reciprocal embedding of the form and substance of regulations and the social and cultural frameworks which situate them, and in which they express themselves. Prescriptions and proscriptions, looked at as a side-effect of sociocultural systems of classification. The role of the so-called taxonomic anomalies.

- Douglas**, M. (1957), "Animals in Lele Religious Symbolism", *Africa* 27 (1): 46-58.
- Leach**, E. R. (1964), "Anthropological aspects of language: animal categories and verbal abuse", in *New Directions in Study of Language* (ed.) Lenneberg, E., Harvard University Press: 23-63.
- Douglas**, M. (1966), *Purity and danger. An analysis of concepts of pollution and taboo*, Routledge and Kegan Paul, London.
- Tambiah**, S. J. (1969), "Animals are good to think and good to prohibit", *Ethnology*.
- Sperber**, D. (1975), "Pourquoi les animaux parfaits, les hybrides et les monstres sont-ils bons à penser symboliquement?", *L'Homme* 15 (2): 5-34.
- Douglas**, M. (1996), "Anomalous animals and animal metaphors", in *Thought Styles*; 126-145, Sage, London.

HIERARCHIES, EGALITARIANISMS AND EXCHANGES: THE CONSTRUCTION OF SOCIAL STRATIFICATION, MODES OF EXPRESSION OF AUTHORITY, AND COSMOLOGICAL ELABORATIONS (6)

The role of political, social, and cosmological forms which subtend the symbolic constructs each society generates as to its own stratification. Variations on the social dynamics of the construction of equality and hierarchy.

Bloch, M. (1989), "Symbols, song, dance and features of articulation: is religion an extreme form of traditional authority?", *Ritual, History and Power*: 19-46, The Athlone Press, London.

Marques Guedes, A. (1997), "Representações religiosas e igualitarismo político entre os caçadores e recolectores Atta de Kalinga-Apayao, Filipinas, in *O conceito de Representação, Revista da Faculdade de Ciências Sociais e Humanas da Universidade Nova de Lisboa*, 10:123-155, Lisboa.

_____ (1999), "Sonhos Políticos: obliquidade e poder na interpretação pública e colectiva de sonhos entre os Atta do norte de Luzon, Filipinas", *Etnográfica* 3(1): 157-193; ISCTE, Lisboa.

PART 1

COMPARATIVE CULTURAL AND SOCIAL GRIDS

THE STATE, JUDICIAL INSTITUTIONS AND FORMALIZATION: AN EXAMPLE FROM ZAMBIA, CENTRAL AFRICA (7)

The configurations and mechanics of processes of dispute resolution. The usefulness of Western legal concepts and its limits. The traditional State and justice. Jurisprudence and concrete practices. The roles of fonctionnaires.

Gluckman, M. (1955), *The Judicial Process among the Barotse of northern Rhodesia*, Manchester University Press.

SOCIAL AXES AND POLITICAL STRATEGIES: RESPONSABILITIES AND COLLECTIVE SOLUTIONS AMONG THE ILONGOT, PHILIPPINES (8)

A third session explores, in detail, both the logics (segmentary and tied to concepts of collective responsibility) of a particular kind of conflicts, on the one hand, and, on the other, the conceptual mechanics of processes which emerge to solve them. Headhunting and periodic peace-pacts as processual forms according to which Ilongots build and maintain their social unity and integrity as acephalous groups.

Rosaldo, R. (1980), *Ilongot Headhunting, 1883-1974. A study in society and history*, Stanford University Press.

FORMALITY AND INFORMALITY AND JUDICIAL FORMS: AN EXAMPLE FORM BOTSWANA, SOUTHERN AFRICA (9)

In a last session, culturally specific disputes are touched on, as well as the mechanics of the principles used for their resolution in their own social contexts. Rules and

normal processes, in the absence of formalized “laws”. The role of observer concepts and local ones.

Comaroff, J., Roberts, S. (1981), *Rules and Processes. The cultural logic of dispute in an African context*, The University of Chicago Press.

THE ALTERITY OF PRACTICES: CRIME AND PUNISHMENT IN NIGERIA, WEST AFRICA (10)

An ethnographic example of different rules, processes and judicial forms. Discretionary powers and political dimensioning in conflict resolution of disputes. The public and the private. The role of local concepts. The limitations of one of the classical studies. A practice of justice.

Bohannan, P. (1957), *Justice and Judgement among the Tiv*, Oxford University Press.

THE POLITICAL DIMENSION OF A JUDICIAL DISCOURSE: CADI COURTS IN MOROCCO (11)

A DIMENSÃO POLÍTICA DE UM DISCURSO JUDICIAL: OS TRIBUNAIS CADI EM MARROCOS (11)

The political backgrounds of judicial processes in judicial decision-making: the classical example of traditional Moroccan tribunals. Arbitrariness or the imposition of cultural forms in processes marked by their ostensive politico-social ends? An open system or an incompetent one? A theory of justice.

Rosen, L. (1991), *The Anthropology of Justice: law as culture in Islamic society*, Cambridge University Press.

RITUAL ASPECTS OF THE INDEFINITION OF CONJUNCTURES, LEGITIMATION, AUTHORITY AND THE CIRCUMSCRIPTION OF COLLECTIVE IDENTITY: GUERRILLAS IN ZIMBABWE (12)

Following the two earlier sessions, a third example, ethnographically illustrated, of the importance of practical discourses in the definition carried out by each society, of its situational coordinates. The example taken on focuses on the criteria adopted, in the 1970s and 1980s by the Korekore Shona in their decisions as concerns conducts to adopt when faced with Zanu guerilla fighters and the governmental Rhodesian Armed Forces.

Lan, D. (1985), *Guns and Rain: Guerrillas and spirit mediums in Zimbabwe*, James Currey, London & University of California Press.

PUBLIC ADMINISTRATION AS COSMIC MANAGEMENT: SPECTACLE, CEREMONY, AND ROYAL PROTOCOL IN BALI, INDONESIA (13)

A paradigmatic ethnographic instance, in this case the eighteenth century Kingdom of Bali, clearly brings to the fore the cosmological framing of the legal and political organization of the State of royal statuses. The exercise of power seen as a semiological expression of this structural enmeshment. The limits of classical interpretations brought out.

Geertz, C. (1980), *Negara: the theatre State in nineteenth-century Bali*, Princeton University Press.

PART 2

DESCRIPTIONS AND ANTHROPOLOGICAL ANALYSES OF THE JURAL AND THE POLITICAL IN PORTUGAL

EXCHANGES AND DEPENDENCIES: RELATIVES, NEIGHBOURS, ECONOMICS AND HIERARCHIES IN ALENTEJO (14)

The fourth and last part of the Programme is dedicated to anthropological studies of Portugal, and touch upon some of the frameworks, mechanisms, and processes analyzed above. A first example puts on stage the theme of a rural interpretation of kinship, patronage relationships, and internal as well as external political and social relations in a village from the Alentejo.

Cutileiro, J. (1977), *Ricos e Pobres no Alentejo*, Sá da Costa, Lisboa.

INHERITANCE, FAMILIES, AND SOCIAL GROUPINGS: STRATIFICATION IN TRÁS-OS-MONTES (15)

A second session, devoted to a highland community, touches on the various structural and historical dimensions of an agrarian society and economy. Work, family, and inheritance seen and studied in these contexts. The importance of these for an elucidation of traditional practices within these domains.

O'Neill, B. (1987), "Pul Eliya in the portuguese mountains. A comparative essay on kinship practices and family ideology", *Sociologia Ruralis* 27 (4):278-303

——— (1989), "Célibat, bâtardise et hiérarchie sociale dans un hameau portugais", *Études Rurales* 113-114:37-86.

——— (1997), "Práticas de sucessão em Portugal: panorama preliminar", *Trabalhos de Antropologia e Etnologia* 37(1-2):121-148.

THE JURAL CONTEXTS OF POLITICS AND THE POLITICAL CONTEXTS OF LAWS: MARGINALITY AND THE *ESTADO NOVO* (16)

As a last example, the political dimensions of legal decisions and institutions progressively brought about by the Estado Novo for 'marginals' and 'waywards' is brought out. The creative and repressive functions of law and politics. The production of images of an ideal social behavior by means of a public formulation of behaviours to be excluded. The formal and jural dimension of political acts in a very particular society: the Portuguese one, in the mid-20th Century. The limits of the model used.

Pereira Bastos, S. (1997), *O Estado Novo e os seus Vadios, Contribuição para o estudo das identidades marginais e da sua repressão*, D. Quixote, Lisboa.

SUPPLEMENTARY BIBLIOGRAPHY, optional

Other useful didactic references, ordered chronologically:

Llewellyn, K. e Hoebel, E. A. (1942), *The Cheyenne Way. A study in primitive jurisprudence*, University of Oklahoma Press.

Hoebel, E. A. (1954), *The Law of Primitive Man. A study of legal dynamics*, Harvard University Press.

Gulliver, P. H. (1963), *Social Control in an African Society. A study of the Arusha: agricultural Masai of northern Tanganyika*, Routledge, London.

Gluckman, M. (1965), *Ideas in Barotse Jurisprudence*, Manchester University Press.

Bohannan, P. (ed.), (1967), *Law and Warfare. Studies in the Anthropology of Conflict*, The Natural History Press, New York.

Pospisil, L. (1971), *Anthropology of Law: a comparative study*, Harper and Row, New York.

Falk-Moore, S. (1978). *Law as Process: an anthropological approach*, Routledge & Kegan Paul, London.

Roberts, S. (1979), *Order and Dispute: an introduction to legal anthropology*, Penguin, London.

Comaroff, J. e Roberts, S. (1981), *Rules and Processes. The cultural logic of dispute in an African context*, The Chicago University Press.

Caplan, P. (1995), *Understanding Disputes. The Politics of Argument*, Berg.

Marques Guedes, Armando (2005), *Entre Factos e Razões. Contextos e Enquadramentos da Antropologia Jurídica*, Almedina, Coimbra.

_____ (2005), *Sociedade Civil e Estado em Angola. O Estado e a Sociedade Civil sobreviverão um ao outro ?*, Almedina, Coimbra.

Barnes, J. A. (1961), "Law as politically active: an anthropological view", em (ed.) J. Sawyer, *Studies in the Sociology of Law*: 167-196, Canberra.

Nader, L. (1965), "The anthropological study of law", *American Anthropologist* 67: 3-32.

Nader, L. (ed.) (1965), *The Ethnography of Law*, número especial *American Anthropologist* 67(6), parte 2.

Nader, L. Koch, K. F. e Cox, B. (1966), "The Ethnography of Law: a bibliographical survey", *Current Anthropology*: 267-294.

Gluckman, M. (ed.) (1969), *Ideas and Procedures in African Customary Law*, Oxford University Press.

Nader, L.(ed.) (1969), *Law in Culture and Society*, The University of Chicago Press.

- Epstein**, A. L. (1973), "The Reasonable Man revisited: some problems in the anthropology of law", 7 *Law & Society Review* 643.
- Abel**, R. (1974), "A comparative theory of dispute institutions in society", 8 *Law and Society Review* 218.
- Hammet**, I. (ed.) (1977), *Social Anthropology and Law*, Academic Press, London.
- Leach**, E. (1977), *Custom, Law and Terrorist Violence*, Edinburgh University Press.
- Kennedy**, D. (1979), "The structure of Blackstone's Commentaries", 28 *Buffalo Law Review* 205.
- Snyder**, F. (1981), "Anthropology, dispute processes, and law: a critical introduction", *British Journal of Law and Society* 8(2): 141-180.
- Critical Legal Studies Symposium** (1984), 36(1-2) *Stanford Law Review*.
- Ortner**, S. (1984), "Theory in Anthropology since the Sixties", *Comparative Studies in Society and History* 66(1): 126-166.
- Francis**, P. (1984), "New directions in the study of African law", *Africa* 54(4): 81-88.
- Fitzpatrick**, P. (1985), "Is it simple to be Marxist legal anthropologist?", 48 *Modern Law Review* 472.
- Falk-Moore**, S. (1986), *Social Facts and Fabrications. "Customary" Law in Kilimanjaro, 1880-1980*, Cambridge University Press.
- Starr**, J. e **Collier** J. (1987), "Historical studies of legal change", *Current Anthropology* 28: 367-372.
- Starr**, J. e **Collier**, J. (ed.) (1989), *History and Power in the Study of Law: new directions in legal anthropology*, Cornell University Press.
- Rouland**, N. (1991), *Anthropologie Juridique*, Presses Universitaires de France, Paris.
- _____ (1994), *Legal Anthropology*, The Athlone Press, London.
- Gulliver**, P. H. (1996), "On Avoidance", em D. Parkin, L. Kaplan e H. Fisher (eds.), *The Politics of Cultural Performance*: 125-144, Berghahn Books, Providence-Oxford.
- Brouwer**, R. (1999), "Changing Name-Tags. A legal anthropological approach to communal lands in Portugal", *Journal of Legal Pluralism* 43:1-31.
- Marques Guedes**, A., *et al.* (2001), "Litígios e pluralismo em Cabo Verde. A organização judiciária e os meios alternativos", *Themis. Revista da Faculdade de Direito da UNL* 3: 1-69, Lisboa.
- _____ (2002), *Litígios e Legitimação. Estado, sociedade civil e Direito em S. Tomé e Príncipe*, Almedina, Coimbra.
- _____ (2004), *Pluralismo e Legitimação. A Edificação Jurídica Pós-Colonial de Angola*, Almedina, Coimbra.
- (org.) **Sousa Santos**, B., *et al.* (2003), *Conflito e Transformação Social. Uma Paisagem das Justiças em Moçambique*, Afrontamento.
- Marques Guedes**, A., *et al* (2003), *Pluralismo e Legitimação. A edificação jurídica pós-colonial de Angola*, Almedina.
- Marques Guedes**, A. (2004), *O Estudo dos Direitos Africanos. Estado, Sociedade, Direito e Poder*, Almedina.
- Marques Guedes**, A. e **Lopes**, M.J. (2007), *State and Traditional Law in Angola and Mozambique*, Universiteit Leiden and Instituto Diplomático, Almedina.
- Marques Guedes**, A. (2010), "President and Prime Minister. Twinning up and switching down", *Magazine. Jornal Oficial da Presidência da República Democrática de Timor-Leste*, vol 1, no. 1: 12-13. High-resolution pdf available for download at <http://www.presidencia.tl/mag/mag0/page1.html>, Dili, East-Timor.
- Marques Guedes**, A. (2011), "Performative Political Power Repertoires and Shifting Waters in the East-Timorese 'Semi-Presidentialist' System of Government", in (eds.)

Nuno Canas Mendes and André Saramago, *Dimensions of State-Building*: 89-111, Instituto Superior de Ciências Sociais e Políticas, Lisboa.

ASSESSMENT METHODS

Students will present short written papers on one of the topics of the Programme below. A final exam determines the minimal final classification obtained, which the quality of the paper presented may ameliorate. While the first six sessions of the Programme are “magisterial lectures”, the latter ones include a small presentation of the theme by selected groups of students, followed by discussions around them. In terms of Faculty rules there is an obligatory final exam. Both for the exam and the short papers that will serve as the bases for discussions in the second part of the Programme, evaluation will depend on clarity in the use of Legal Anthropology concepts used and discussed (40%), on knowledge of the examples treated (20%), and on the creativity displayed (40%).