



Anthropology & Law Seminar

**Laws 53306 / Anth 55501
Course Syllabus
Winter 2023
Christopher Fennell**



Overview

This seminar for law school students and graduate students will provide an introduction to the field of legal anthropology. We will address anthropological theories of the nature of law and disputes, examine related studies of legal structures in non-Western cultures, and consider the uses of anthropology in studying facets of our own legal system. By examining individual legal institutions in the context of their particular cultural settings, we can begin to make cross-cultural comparisons and contrasts. In so doing, we confront the challenge of interpreting and understanding the legal rules and institutions of other cultures while assessing the impact of our own social norms and biases on the analysis. Thus, our analytic and interpretative approach will require us to examine the cultural assumptions that underpin various aspects of our own belief systems and the American legal system. We will also consider cultural resource management laws, the Native American Graves Protection and Repatriation Act, and related ethical debates in anthropology and museum practices.

Instructor: Chris Fennell (MA, U. Pennsylvania, 1986; JD, Georgetown U., 1989; Ph.D., U. Virginia, 2003) is a Professor of Anthropology & Law, University of Illinois, and a Visiting Professor of Law, University of Chicago.

This class meets on Tuesdays from 3:30pm to 5:30pm in Classroom E of the Law School, 1111 East 60th Street.

Office Hours: Wednesdays, 1:00pm to 3:00pm; please email me to arrange a time to meet or to chat by remote services. My office is Room 506 in the Law School; cell phone 312-513-2683, and email cfennell@uchicago.edu.

I have created a course web page using the Law School's *Canvas* program. Enrolled students can access the course web page by logging onto the *Canvas* system for access to the course syllabus, reserve readings, class notes and illustrations, and other online class resources, each set out in a separate "Module." Other primary course documents that you will find useful in this seminar are available in separate Modules on the *Canvas* site, including:

List of Potential Paper Topics;
Sources on Anthropology and Law;
Sources on Social Norms and Law;
Sources on Analysis of Social Group Identities; and
Sources on Racism, Law, and Social Sciences.

Required Texts

The following required texts are available at the University bookstore or can be purchased through internet booksellers.

Minding the Law, by Anthony G. Amsterdam and Jerome Bruner. Cambridge, MA.: Harvard University Press. 2002.

Just Words: Law, Language and Power, by John M. Conley and William M. O’Barr. Chicago: University of Chicago Press. 2019.

Between Law and Culture: Relocating Legal Studies, edited by David T. Goldberg, Michael Musheno, and Lisa C. Bower. Minneapolis: University of Minnesota Press. 2001.

Additional readings, which will also be provided through online reserve on the *Canvas* site, include:

“Cultural Secrecy and the Protection of Cultural Property,” by Sarah Harding, in *Topics in Cultural Resource Law*, edited by Donald F. Craib, pp. 69-78. Washington, D.C.: Society for American Archaeology, 2000 (on electronic reserve).

“Human Rights Talk and Anthropological Ambivalence: The Particular Contexts of Universal Claims,” by Marie-Bénédicte Dembour, in *Inside and Outside the Law*, pp. 19-40. London: Routledge. 1996 (on electronic reserve).

“Introduction: Feminism, Multiculturalism, and Human Equality,” by Joshua Cohen, Matthew Howard, and Martha Nussbaum, in *Is Multiculturalism Bad for Women?* edited by Joshua Cohen, Matthew Howard, and Martha Nussbaum, pp. 3-5. Princeton, NJ: Princeton University Press, 1999 (on electronic reserve).

“Is Multiculturalism Bad for Women?” by Susan M. Okin, in *Is Multiculturalism Bad for Women?* edited by Joshua Cohen, Matthew Howard, and Martha Nussbaum, pp. 7-24. Princeton, NJ: Princeton University Press, 1999 (on electronic reserve).

Cultural Resources Laws and Practices, by Thomas King. Lanham, MD: Rowman & Littlefield. 1998 (excerpts on electronic reserve).

Bonnichsen v. United States, No. 02-35994 (9th Cir. 2004) (the “Kennewick man” case) (on electronic reserve).

“Audience, Ownership, and Authority: Designing Relations between Museums and Communities,” by Steven D. Lavine, in *Museums and Communities: The Politics of Public Culture*, ed. by Ivan Karp, Christine Mullen Kreamer, and Steven D. Lavine, pp. 137-57. Washington, D.C.: Smithsonian Institution Press. 1992.

The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes, by Charles Birnbaum and Christine C. Peters. Washington DC: U.S. Department of the Interior, National Park Service. 1996.

Topics in Cultural Resource Law, edited by Donald F. Craib. Washington, D.C.: Society for American Archaeology, 2000 (excerpts on electronic reserve).

Whose Heritage to Conserve? Cross-cultural Reflections on Political Dominance and Urban Heritage Conservation, by John E. Tunbridge, 2008 (on electronic reserve).

Course Requirements

No prerequisite courses are required, and this course is designed to enable graduate students to analyze legal structures and to enable law students to understand and apply anthropological theories and concepts in similar studies. Requirements for this seminar course include preparation of a research paper and thoughtful class participation. Writing for this seminar may be used as partial fulfillment of the JD writing requirement (SRP or WP).

The Seminar Paper

Your grade will be based primarily (80%) on an original analytic research paper that you complete on a topic of your choosing related to anthropology and law. Your paper should apply pertinent anthropological concepts and analyses to critically examine the social and legal issues addressed in your chosen topic.

Schedule for completing the paper:

Project title and abstract (2-3 paragraphs) due:	February 14
Detailed outline due:	February 21
Final paper due:	June 12, 2023 (or April 24 if you are graduating in June 2023)

A final paper submitted late will be reduced by one grading increment for each day of lateness. Late submission on any of the other items will negatively affect your class participation grade. Extensions are of course possible in the case of bona fide emergencies or other compelling circumstances, but these should be addressed before the expiration of the deadline unless circumstances make this impossible.

JD program writing requirement guidelines

With my approval, writing for this seminar may be used as partial fulfillment of the JD

writing requirements. To receive writing credit, you will need to check with me at the outset and meet feedback and revision requirements, as well as the specific requirements for the type of writing credit you are seeking. Generally, seminar papers should be at least 20 pages long and are typically 20-30 pages long (6000-8000 words), including footnotes, and double-spaced in a normal font (such as Times New Roman 12 point), with normal margins. If you are seeking SRP writing credit, a full draft of your paper will be due by May 30, 2023 (or by April 11 if you are graduating in June 2023). Students not interested in obtaining SRP or WP credit are invited to submit drafts according to these deadlines but are not required to do so.

Here is an overview of Law School guidelines for these writing requirements, and more information is available **online** --

Substantial Research Paper (SRP)

An SRP is (1) a careful, extensive treatment of a particular topic; (2) certified by a member of the faculty; (3) submitted by a student who has taken advantage of one or more opportunities to respond to suggestions and criticism in producing the paper; and (4) not largely derivative of work undertaken for another academic degree, for a summer job, or in some other environment outside the Law School.

SRPs are typically 20-30 pages (6,000 to 9,000 words) in length, but revisions and opportunities to rework arguments and writing are more important than length. Faculty members certifying such projects must approve the paper topic and agree to supervise the project prior to the student's undertaking substantial research and writing.

Writing Project (WP)

A student's second, or other, writing project (WP) can, but need not, be of the SRP form. Again, work submitted in satisfaction of either of the two writing requirements may not largely be derivative of work undertaken in pursuit of another academic degree or in a summer job or other environment outside the Law School.

Procedures

Please follow these steps to register for an SRP or a WP: Discuss the project with the faculty member; obtain the faculty member's written consent to supervise the project via his or her signature on a properly completed "Writing Requirement Petition" (available **online**); and submit the form to the Office of the Registrar by the deadline listed in the Academic Calendar (Jan. 13).

Participation

Class participation constitutes 20% of your grade. Barring illness or emergency, you are expected to attend every class session, to have done the reading, and to be ready and willing to discuss.

Class Meeting Schedule and Required Readings

- Week 1**
Jan. 3 **Introduction to anthropological perspectives of law**
- “On the Dialectics of Culture,” in *Minding the Law*, pp. 217-32.
- “Discourses of Law in Cross-Cultural Perspective,” chapter 6 in *Just Words*, pp. 101-120.
- Week 2**
Jan. 10 **Language, law and power**
- “Politics of Law and Science of Talk,” chapter 1 in *Just Words*, pp. 1-16.
- “Revictimization of Rape Victims,” chapter 2 in *Just Words*, pp. 17-40.
- “Language of Mediation,” chapter 3 in *Just Words*, pp. 41-61.
- Week 3**
Jan. 17 **Language, law and power, cont’d**
- “Speaking of Patriarchy,” chapter 4 in *Just Words*, pp. 62-80.
- “A Natural History of Disputing,” chapter 5 in *Just Words*, pp. 81-100.
- “Language and Race in the Courtroom,” chapter 10 in *Just Words*, pp. 172-189.
- Week 4**
Jan. 24 **Viewing social realities through judicial categories; Racial and ethnic categories and an implicit discourse on whiteness**
- “On Categories,” in *Minding the Law*, pp. 19-53.
- “Categorizing at the Supreme Court, *Missouri v. Jenkins*,” in *Minding the Law*, pp. 54-77.
- “Race, the Court and America’s Dialectic,” in *Minding the Law*, pp. 246-281.
- “States of Whiteness,” by David Goldberg, in *Between Law and Culture*, pp. 174-191.
- Week 5**
Jan. 31 **Inherent identities and sexual orientation; Attempts to define and govern “sexual outlaws”**
- “Walking the Straight and Narrow: Performative Sexuality and the First Amendment after Hurley,” by Christine A. Yalda, in *Between Law and Culture*, pp. 288-305.
- “Governing Sexuality: The Supreme Court’s Shift to Containment,” by Paul A.

Passavant, in *Between Law and Culture*, pp. 306-324.

“Enclosure Acts and Exclusionary Practices: Neighborhood Associations, Community Police, and the Expulsion of the Sexual Outlaw,” by Lisa E. Sanchez, in *Between Law and Culture*, pp. 122-140.

Week 6 **Indigenous groups and conflicting concepts of ownership**

Feb. 7

“Purifying the State: State Discourses, Blood Quantum, and the Legal Mis/Recognition of Hawaiians,” by Rona T. Halualani, in *Between Law and Culture*, pp. 141-173.

“Cultural Secrecy and the Protection of Cultural Property,” by Sarah Harding, in *Topics in Cultural Resource Law*, edited by Donald F. Craib, pp. 69-78. Washington, D.C.: Society for American Archaeology, 2000 (on electronic reserve).

Week 7 **Human rights and multicultural negotiations**

Feb. 14

“Human Rights Talk and Anthropological Ambivalence: The Particular Contexts of Universal Claims,” by Marie-Bénédicte Dembour, in *Inside and Outside the Law*, pp. 19-40. London: Routledge. 1996 (on electronic reserve)

“Introduction: Feminism, Multiculturalism, and Human Equality,” by Joshua Cohen, Matthew Howard, and Martha Nussbaum, in *Is Multiculturalism Bad for Women?* edited by Joshua Cohen, Matthew Howard, and Martha Nussbaum, pp. 3-5. Princeton, NJ: Princeton University Press, 1999 (on electronic reserve).

“Is Multiculturalism Bad for Women?” by Susan M. Okin, in *Is Multiculturalism Bad for Women?* edited by Joshua Cohen, Matthew Howard, and Martha Nussbaum, pp. 7-24. Princeton, NJ: Princeton University Press, 1999 (on electronic reserve).

Deadline: project title and abstract (2-3 paragraphs in length) describing your planned seminar paper (delivery via email).

Week 8 **Cultural heritage and ownership conflicts**

Feb. 21

Cultural Resources Laws and Practices, by Thomas King. Walnut Creek, CA.: AltaMira (2d ed. 2004) (excerpts on electronic reserve).

Bonnichsen v. United States, No. 02-35994 (9th Cir. 2004) (the “Kennewick man” case) (on electronic reserve).

Deadline: detailed outline of seminar paper, including citations of sources identified thus far that you intend to use (delivery via email).

Week 9 Cultural heritage preservation and ethical issues

Feb. 28

Audience, Ownership, and Authority: Designing Relations between Museums and Communities, by Steven D. Lavine, in *Museums and Communities: The Politics of Public Culture*, ed. by Ivan Karp, Christine Mullen Kreamer, and Steven D. Lavine, pp. 137-157. Washington, D.C.: Smithsonian Institution Press. 1992 (electronic reserve).

The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes, by Charles Birnbaum and Christine C. Peters. Washington DC: U.S. Department of the Interior, National Park Service. 1996 (excerpts on electronic reserve).

Suggested reading: *Topics in Cultural Resource Law*, edited by Donald F. Craib. Washington, D.C.: Society for American Archaeology, 2000 (excerpts on electronic reserve).

Suggested reading: *Whose Heritage to Conserve? Cross-cultural Reflections on Political Dominance and Urban Heritage Conservation*, by John E. Tunbridge, 2008 (excerpts on electronic reserve).

Term end Final paper due on deadlines as indicated.

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Learning outcomes. After completing this class, I expect that students will: Be familiar with the general approaches to the study of law and legal reasoning; Demonstrate the ability to identify and understand key concepts in substantive law, legal theory, and procedure; Have the ability to write a competent legal analysis; Demonstrate the ability to conduct legal research; Demonstrate communication skills, including oral advocacy; Demonstrate an understanding of the interdisciplinary nature of law and the contributions that other disciplines can make to the study of law.

[Last updated: Jan. 6, 2023]