

**Department of Sociology
Faculty of Social Sciences
South Asian University - New Delhi**

Sociology of Law

(Optional Course for MA)

Total Credits: 4

Max Weber, in his magnum opus 'Economy and Society', distinguished between two approaches of studying law in terms of their differing objectives. The jurist, assuming the empirical validity of the legal propositions, examines each of them and tries to determine its logically correct meaning in such a way that all of them can be combined in a system which is logically coherent, i.e., free from internal contradictions. The sociologist, on the other hand, contemplates the interconnections of human activities as they actually take place. As Weber explains, "one exists in the ideal realm of the 'ought,' while the other deals with the real world of the 'is.'" This course will focus on the latter approach: but will supplement it by examining the underpinnings of the former. The aim will be to develop tools to analyze and interrogate the intersections of the normative and the empirical.

In this course we will first examine classic debates about the nature of modern law in social theory. We then move on to the contemporary sociology of law tradition, focusing on classic legal ethnographies and some central debates of legal anthropology. We will also briefly examine the sociological tradition within legal academia. Next, we will study modern law in its colonial avatar, focusing on its South Asian history. These three modules will prepare the ground for our principal and final object of study: sociological studies of law in South Asia.

Selected portions will be prescribed from these prescribed texts for the course.

Unit I Law and modern social theory:

This module will focus on the intersections of law with modern social theory. There will be three principal components. The first will deal with the concerns vis-à-vis law of classical social theory -- Marx, Weber and Durkheim—its central problem being understanding the role of law in the rise of modernity and capitalism as well as examining the peculiarly modern nature of the new legal form. The second component will concentrate on Foucault's insights on proliferation of disciplinary norms in the modern era and their relation to the juridical institutional fields. And the third component will examine the Weimar era writings on law and the state of exception by Walter Benjamin and Carl Schmitt, and will then revisit these key texts through their influential re-readings by Derrida and Agamben.

Max Rheinstein (ed.). 1954. *Max Weber on Law in Economy and Society*, Simon & Schuster.
Trubek D. 1972. "Max Weber on law and the rise of capitalism," *Wisconsin Law Review* : 720-53

Pashukanis, E.B. 1987. *Law and Marxism: a general theory*. Pluto Press.

S. Spitzer. 1983 "Marxist perspectives in the sociology of law." *Annual Review of Sociology*, 9:103--124.

Thompson, E.P. 1976. *Whigs and Hunters: the origin of the Black Act*. Pantheon.

Lukes, Steven, and Andrew T. Scull, eds. 2013. *Durkheim and the Law*. Palgrave Macmillan.

Foucault, Michel.1977. *Discipline and Punish*, Vintage books.

Michel Foucault. 2000. "About the Concept of the Dangerous Individual in Nineteenth Century Legal Psychiatry," and Foucault, Michel, "Omnes et Singulatim: Toward a Critique of Political Reason," from Foucault, Michel, and James Faubion." *Power: Essential Works of Michel Foucault 1954-1984, vol. 3.* London: Allen Lane.

François Ewald.1990. "Norms, Discipline, and the Law," *Representations*, No. 30, Special Issue: Law and the Order of Culture. 138-161.

Nikolas Rose and Mariana Valverde. 1998 "Governed by law?", *Social & Legal Studies* vol. 7 no. 4 541-551

Benjamin, Walter. 1978. "Critique of Violence" in *Reflections*, Schocken Books.

Schmitt, Carl. 1985. *Political Theology*, MIT Press.

Derrida, Jacques. 1992. "Force of law: The Mystical Foundation of Authority," in Drucilla Cornell et al (ed.), *Deconstruction and the Possibility of Justice*, Routledge, 3-67.

Agamben, Giorgio. 2005. *State of Exception*, University of Chicago Press.

Unit 2 The traditions of sociology of law

This module will introduce some key traditions of doing sociological research on law, particularly the ethnographic approach. There will be broadly four components in this module. We will first read some classic ethnographies in this field- studying both the "rule-centred" and "processual" approaches to legal ethnography. We then move on to more contemporary legal ethnographies with discursive and genealogical concerns being foregrounded. In our third module, we will study the tradition of sociological study of law within legal academia, with its formulation of 'sociological jurisprudence' and the American 'law and society' approach. In our fourth and fifth module, we will tackle two key areas of debate that sociology of law has had to respond to — the issue of Legal pluralism and popular justice; and human rights versus cultural relativism.

Conley, John M., and William M. O'Barr. 1993 "Legal anthropology comes home: A brief history of the ethnographic study of law." *Loy. LAL Rev.* Vol 27 41.

Malinowski, Bronislaw. 1926. *Crime and Custom in Savage Society*.

Conley, J. M. and O'Barr, W. M. 2002. "Back to the Trobriands: The Enduring Influence of Malinowski's Crime and Custom in Savage Society." *Law and Social Inquiry*, 27:847-874.

Gluckman, M. 1989. *The judicial process among the Barotse of Northern Rhodesia*. Berg Publishers

Comaroff, J. L. and Comaroff, J. 2009. "Reflections on the Anthropology of Law, Governance

and Sovereignty," In *Rules of Law and Laws of Ruling: On the Governance of Law*. von Benda-Beckmann, F., von Benda-Beckmann, K., and Eckert, J., (eds.) 31-59. Farnham: Ashgate Publishing.

James Clifford. 1998. "Identity in Mashpee," in *The Predicament of Culture: Twentieth-Century Ethnography, Literature and Art* (Cambridge, MA, and London: Harvard University Press)

Pierre Bourdieu. 1987. "The Force of Law: Toward a Sociology of the Juridical Field." *Hastings Law Journal*. 35: 805-853

Galanter, Marc. 1974. "Why the "haves" come out ahead: Speculations on the limits of legal change." *Law & Society Review* 9.1 95-160.

Merry, Sally Engle. 1998. "Legal Pluralism," *22 Law and Society Review* 894

Merry, Sally Engle, and Neal A. Milner, eds. 1995. *The possibility of popular justice: A case study of community mediation in the United States*. University of Michigan Press.

Foucault, Michel. 1977. "On popular justice: A discussion with Maoists." *Power/Knowledge: Selected Interviews and Other Writings* 1-36.

Merry, Sally Engle. 2003 "Human Rights Law and the Demonization of Culture (And Anthropology Along the Way)" *Polar: Political and Legal Anthropology Review* 26:1: 55-77.

Talal Asad. 2000 "What Do Human Rights Do? An Anthropological Enquiry", *Theory and Event*, 4(4).

Unit 3 Law, History and Colonialism

This module will focus on the modern history of law outside the West, as framed by the colonial encounter. The legitimacy of the colonial rule of law was continually reframed by the dialectic of *finding* law in the colonies (religious or customary law) and *giving* law to the colonies (codification)- and the readings will reflect on this tension. While the focus will be on South Asian legal history, analogous debates in Africa will also be studied. The aim will be to trace the genealogy of legal concepts that continue to over-determine the postcolonial present: in particular customary and religious personal law.

Maine, Henry Sumner. 1906. *Ancient law, its connection with the early history of society and its relation to modern ideas*. J. Murray.

Karuna Mantena, *Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism*. Princeton University Press, 2010

Stokes, Eric. 1959. *The English Utilitarians and India*. Oxford: Clarendon Press

Hussain, Nasser. *The jurisprudence of emergency: Colonialism and the rule of law*. University of Michigan Press, 2003.

Cohn, Bernard S. 1996. "Law and the Colonial State in India," *Colonialism and its Forms of Knowledge*. Oxford University Press, pp. 57-75.

Anderson, M.R. 1995. "Islamic law and the Colonial Encounter in British India", Peter Robb & David Arnold (ed.), *Ideologies and Institutions*, Routledge, 165-185

Lata Mani. 1987. Contentious Traditions: The Debate on Sati in Colonial India, *Cultural Critique*, No. 7, 119-156

Martin Chanock. 1985. *Law, custom, and social order: The Colonial Experience in Malawi and Zambia*. Cambridge:Cambridge University Press.

Mamdani, Mahmood. 1996. *Citizen and subject*. Princeton: Princeton University Press.

Bhattacharya, Neeladri. 1997. "Remaking custom: the discourse and practice of colonial codification," *Tradition, Dissent, and Ideology: Essays in Honor of Romila Thapar*. Delhi: OUP

Gilmartin, D. 1988. "Customary Law and Shari'at in British Punjab," in *Shari'at and Ambiguity in South Asian Islam*. K. P. Ewing (ed.), 43-62. Berkeley: University of California Press

Unit 4 Sociology of law in South Asia

This course will culminate with its main focus: sociological research on law in South Asia. In this module, we will study ethnographies from throughout the region. Two main concerns emerge: the project of the postcolonial state to reconfigure social relations through law with its impact on gender, caste and community; and statist attempts to deal with popular justice forms and experiments to revive them.

Galanter, Marc. 1989. *Law and Society in Modern India*. OUP: Delhi.

Upendra Baxi. 1982. *The crisis of the Indian legal system*, Vikas Publishers.

Srinivas, M.N. 2004. "The Study of Disputes in an Indian Village (1959)," "A Caste Dispute among the Washermen of Mysore (1954)," "A joint family dispute in a Mysore village (1953)," and "The Case of the Potter and the Priest (1959)," *The Oxford India Srinivas*, New Delhi: Oxford University Press. 93-99, 100-121,122-142,143-157

Dhareshwar, Vivek and R. Srivatsan. 1996. "Rowdy Sheeters: An essay on Subalternity and Politics", *Subaltern Studies IX*, 201-231.

Das, Veena. 2004. "The Signature of the State," in Das & Poole(ed.), *Anthropology in the Margins of the State*, School of American Research Press, pp. 225-252.

Gilmartin, David. 2010. "Rule of Law, Rule of Life: Caste, Democracy, and the Courts in India." *The American Historical Review* Vol 115.2 406-427.

Marc Galanter. 1962. "The Problem of Group Membership: Some Reflections on the Judicial View of Indian Society", *The Journal of the Indian Law Institute*, Vol. IV, No. 3 331-58.

Chowdhry, Prem. 2004. "Private lives, state intervention: cases of runaway marriage in rural north India." *Modern Asian Studies* 38.1 55-84.

Mody, Perveez. 2008. *The intimate state: Love-marriage and the law in Delhi*. Routledge.

Pratiksha Baxi. 2010. "Justice is a Secret: *Compromise in Rape Trials*" *Contributions to Indian Sociology*, Vol. 44 no. 3, 207-233

Flavia Agnes, 1992. "Protecting Women against Violence? Review of a Decade of Legislation, 1980-89," *Economic and Political Weekly* April 25, 1992, WS 19- WS 33

E. Adamson Hoebel, "Fundamental Cultural Postulates and Judicial Lawmaking in Pakistan," *American Anthropologist*, New Series, Vol. 67, No. 6, Part 2: The Ethnography of Law(Dec., 1965), pp. 43-56

Naveeda Khan. 2005. "Trespasses of the state: Ministering to Theological Dilemmas through the Copyright/Trademark," *Sarai Reader: Bare Acts*, p. 178-188

Daud Munir. 2012. "From judicial autonomy to regime transformation: the role of the lawyers' movement in Pakistan" in Halliday, Terence C., Lucien Karpik, and Malcolm M. Feeley, eds. *Fates of political liberalism in the British post-colony: the politics of the legal complex*. Cambridge University Press.

Ahmed, Asad Ali. 2009. "Specters of Macaulay: Blasphemy, the Indian Penal Code, and Pakistan's postcolonial predicament." *Censorship in South Asia: Cultural Regulation From Sedition to Seduction*, edited by Raminder Kaur and William Mazzarella, Indian University Press, 172-205.

Warraich, Sohail Akbar, "'Honour killings' and the Law in Pakistan," in Hossain, Sara, and Lynn Welchman, eds. *'Honour': Crimes, Paradigms and Violence Against Women*. Zed Books, 2005, pp. 78-110

Hossain, Sara. 2004. "Apostates', Ahmadis and Advocates: Use and Abuse of Offences Against Religion in Bangladesh." *Warning Signs of Fundamentalisms*, Ayesha Imam, Jenny Morgan & Nira Yuval Davis eds.

Dina M. Siddiqui. 2005 "Of consent and contradiction: forced marriages in Bangladesh," in Hossain, Sara, and Lynn Welchman, eds. *'Honour': Crimes, Paradigms and Violence Against Women*. Zed Books, 282-307

Lauren Leve. 2007. "Secularism is a Human Right!": Double-Binds of Buddhism, Democracy and Identity in Nepal" in *The Practice of Human Rights: Tracking Law Between the Global and the Local* (ed.), pp. 78-114

Jones, Peris, and Malcolm Langford. 2011. "Between Demos and Ethnos: The Nepal Constitution and Indigenous Rights." *International Journal on Minority and Group Rights* Vol.18.3 369-386.

Udagama, Deepika. 2012. "The Sri Lankan Legal Complex and the Liberal Project: Only thus far and No more," in Halliday, Terence C., Lucien Karpik, and Malcolm M. Feeley, eds. *Fates of political liberalism in the british post-colony: the politics of the legal complex*. Cambridge University Press.

Neelan Tiruchelvam. 2000. "The Politics of Federalism and Diversity in Sri Lanka" in Ghai, Yash, ed. *Autonomy and ethnicity: negotiating competing claims in multi-ethnic states*. Cambridge University Press, 197-218.