Exercise: What does law and social science have in common?

Seeing society as a unit
- which law regulates
- is defined by the reaches of the law (laws of the nation-state)

This duality is a departure point for discussing legal pluralism or plural legalities. Does law create community? Or are laws expressions of communities?

Another departure point: Investigating modernity
- law an expression of modern social solidarity (Durkheim)
- law is reason-based sociality (Weber)

Cotterell: establishing pure types of 'normativity'

Towards a legal concept of community

Four pure (fundamental) types of social action (orientation) (after Weber) corresponding to four pure types of collective involvement (that engender communities):

1. Habitual or traditional form – traditional (local) community
2. Convergence of interest (purpose-rational) – instrumental community
3. Sharing of belief (value-rational) – community of belief
4. Mutual affection (affective) – affective community

What type is a 'clan'? Which communities are you a member of?

Towards a legal concept of community

Characteristics of 'community' ('polity', 'political society') as a social unit, or society:

➢ Stable, joint, lasting action (as an identifiable (corporate?) group)
➢ Sense of attachment (mutual concern, membership/citizenship)
  ➢ Attitudes to outsiders (degrees of exlusivity/inclusivity)

Analytical focus: (1) cohesion or formation of trust, along axes of social action

(cf. anthropology: on 'culture' or 'the stuff inside symbols') (2) social transformation, from tradition to modernity

Problem: why is the nation-state so eager at regulating the affective community even as it simultaneously provide for the autonomy of instrumental communities

Ethnicity: the social organisation of cultural distinctiveness

- ethnicity: a 'dual' concept

- it categorises 'the other', creating cognitive maps of relevant others

- it defines the self, it is the collective aspect of self-identification

- ethnicity: a labelling system where collective identities ('cultures') are negotiated and fixed, making social groups stable across time (generations), and boundaries more permanent ('cultural' by being 'second nature')

Ethnicity: the social organisation of cultural distinctiveness

Types of boundaries / empirical foci of anthropological studies:

➢ modern migrants (urban ethnic minorities)

➢ indigenous peoples

➢ proto-nations (ethnonationalist movements)

➢ ethnic groups in plural societies

➢ post-slavery minorities

- The role of symbols in creating order
- Which symbols are used in mutual demarcation, and how do they become effective?
- In what resides the power of symbols:

➢ multivocality

➢ legibility

➢ 'good to think'

➢ creating attachment

➢ the use of them in group formation (particularly as reinforced by states)

Cultural and legal diversity

for next class: apply the types-of communities approaches and boundary-dynamics centred approaches (i.e., anthropological or social constructivist perspectives) to analyse a case of conflicting group interest in a chosen country

Studying ethnicity, anthropologically

Whatever the 'cultural stuff' is, it can be studied as

➢ (a) representations (emblems, symbols) we use for social navigation, prompting rules of social behaviour

➢ (b) representations we use for belonging, prompting social affiliation or membership

(a) is studying the fixing of group representations, typically by analysing boundary dynamics or labelling processes involving

➢ Stereotyping

➢ Stigmatisation

➢ Under- and over-communication of differences

➢ Reification (e.g. turning practices/customs into stable symbols or representations)

➢ Dichotomisation (separating by contrasting)

➢ Complementarisation (matching; making equal in value)

auxiliary disciplines: semiotics, communication theory

Studying ethnicity, anthropologically

(b) is studying the fixing of social groups (internal cohesion) by analysing

- ➢ the collective identities of the self
- ➢ the construction of the community (us and them; we and you)
- ➢ processes of inclusion and exclusion (and marginalisation)
- ➢ rules of membership
  - ➢ in affiliative groups by descent or kinship
  - ➢ in political communities by citizenship

- ➢ contrasting case: epistemic communities (instrumental?)

Ethnicity and Power

The role of power in fixing meaning and stabilising hierarchies

- The role of the state / using affiliation & categorisation to unite and control
- From social class to ethnic group (South Africa)
- From occupational specialisation to ethnic group (India)
- Incorporation by conquest and colonisation
- Exclusion/inclusion
- Ascription of rights and human rights
- Identity politics
- Law as an instrument in all this

Studying States I

- The evolution of the state
  - ➤ from band to tribe/clan/house to kingdom to empire to modernity

- The history of the nation-state
  - ➤ Primordialist v constructivist perspectives
  - ➤ Romantic v republican nationalism: citizenship from below v from above
  - ➤ Globalisation and human rights

- The Genocide Convention: a ban on destroying the 'cultural stuff' inside or building material of national, racial, ethnic or religious groups

- Types of inter-state group relations – and of conflict and constitutional arrangements:
  - ➤ Federalism/autonomy for urban ethnic minorities, indigenous peoples, proto-nations, plural societies, post-slavery societies?

Studying States II

Studying state formation:

➢ analysing the history of states as "peoples" or "nations": ancestry, descent, origin myths (ontology); example: European history as the history of nation-states

➢ analysing "everyday state formation" or "state effects"; the mechanisms of constructing political communities, example: turning peasants into Frenchmen

  ➢ processes of exclusion and inclusion, integration and segregation

  ➢ rights-based or bureaucratically produced exclusion or inclusion

Social distance in contrast to bureaucratically effected distance

From empire to nation-state: the «culturing» of central authority or «ethnifying» social boundaries

Ethnogenesis (the culturing of social distance)

Degrees of ethnic incorporation				
	category	network	association	community (ethnie)
standardised ascription	x	x	x	x
interaction along ethnic lines		x	x	x
goal-oriented corporate organisation			x	x
territorial base				x

Nationalism

- Romantic nationalism: a form of political incorporation based on identity, «kinship writ large» (German romanticism)

- Republican nationalism: political incorporation based on citizenship (French revolutionism)

- Gellner: nationalism is a political principle holding that all ethnic groups must have states, i.e., political and cultural boundaries must be congruent (constructivism)
- Smith: abstract principles cannot account for emotional attachments (primordialism)
- Anderson: nations are 'imagined communities', sovereign and bounded, symbolically constructed – but where is the 'stuff' giving the symbols of nationalism their power
- Cohen: the self in the symbolic construction of the community

A Case from Guatemala I

Interpretation of situation varies with choice of contextual frame:

➢ - (ethnicity as frame:) a 'plural' or 'multiethnic' state, a result of colonialism, a case of indigenous peoples in a nation-state

➢ - (social conflict:) a peace process, a case of transitional justice, of nation-building, modernisation, globalisation, etc.

- Applying ethnicity and 'indigeneity' as frames highlights the cultural aspects of state building

- Applying the social conflict frame highlights the economic and political aspects of state building and the role of power asymmetries

The Maya community is 'dual': both Maya and Guatemalan

The view from below/building selves: how residents become 'the children of the community' by acquiring respectability (performing community service etc.)

A Case from Guatemala II

The view from above and at the boundary: residents are citizens, peasants or Indians now fast becoming ethnicised as Mayan citizens

➢ - before: incorporation through colonialism

➢ - now: incorporation through development and modernity

The role of human rights:

➢ - group rights empower community authority against state authority

➢ - individual rights force social change

Human rights: a device for creating republican nation-states

The Case of Nepal

- the jati: religious, cultural, ethnic, or national groups?

-group relations: from hierarchy to ignoral to equality

- 1846-1951: the hierarchical, caste-based model of the Rana period (sanskritisation)

- 1960-1990: the developmental and culturally homogenising model of the Panchayat period (nationalism, modernisation)

- 1990- : the 'different but equal' model of today's ethnic activists (multiculturalism)