

ANTHROPOLOGY AND LAW

A Critical Introduction

Mark Goodale

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Introductions are a difficult genre. Their primary readership consists of students and scholars who are new to the discipline. For them, reading an introduction resembles an initiation ritual. It introduces the novice to the intellectual heritage and brings her in touch with the mysteries and unresolved questions of the discipline. It provides a first orientation in the vast body of literature and flags the key texts one should master. At the same time, an introduction speaks to the experts in the particular field – with entirely different intentions. As author of an introduction, you develop your own vision of the subject and claim your position as the new orthodoxy; a message eventually addressed more to your colleagues than to the «beginners». As such, introductions always entail the challenge of writing for at least two different audiences with different expectations; a dilemma difficult to resolve.

In his recent book «Anthropology and Law. A Critical Introduction», Mark Goodale – professor of anthropology at the University of Lausanne, specialized in the anthropology of law and holding a law degree too – answers this dilemma by taking two remarkable decisions. He reduces the discussion of the intellectual heritage to the bare minimum. And he focuses on the development of debates in the anthropology of law after the end of the Cold War. Through this focus on the imminent past, the book gives more attention to the author's own approach to and vision of the anthropology of law than to the detailed history of the sub-discipline. Or, in Goodale's own words: Instead of an «encyclopaedic, globally comprehensive account», the volume provides an «admittedly idiosyncratic examination of the many ways in which anthropologists have transformed – sometimes against their better judgement – the study of law» (p. 2). Goodale argues that the end of the Cold War was a relevant turning point for the anthropology of law, as it has transformed the relationship between law and world society fundamentally. With the end of the bi-polar world

order, the globalisation of transnational legal norms and conflict regulation have gained importance. Two effects of this transformation are the renewed discussion on human rights and the re-emergence of international tribunals.

The author divides the discussion of recent literature in the anthropology of law in three broad themes: law and the production of meaning; law, agency and regulation; and law and identity. An introductory chapter precedes these three thematic threads. In this opening chapter, Goodale roots the intellectual history of the anthropology in the work of two legal anthropologists *avant la lettre*. Johann Jakob Bachofen's *Mutterrecht* and Henry Summer Maine's *Ancient Law* both anticipated the later discussion of comparative legal studies. On the following few pages, the author sketches the history of the anthropology of law. He briefly mentions the sub-discipline's founding texts, such as Malinowski's *Crime and Custom*, and points to some of the key debates in the field, notably the Gluckman-Bohannan debate in the 1950s and 1960s. This brief summary of the intellectual heritage is complemented with additional clarifications later in the text, as each following chapter returns to the history of ideas of the discipline. This contextualises the book's main topics in earlier debates and helps the reader to better understand how discussions have unfolded over time.

After this rush through the history of the anthropology of law, the rest of the book is dedicated to Goodale's actual interest; the research and debates of the last two decades after the end of the Cold War. The author organizes the discussion in three parts with eight chapters in total. The first part («Law and the Production of Meaning») examines how law and legal processes are charged with meaning. To some extent, this takes up the Gluckman-Bohannan debate, which revolved around the question how anthropologists should analyse law:

in terms of analytical and universal categories, as Gluckman suggested, or in culturalised folk categories, as Bohannan proposed. From here, Goodale moves on to the underlying question about the relationship between law and language. The second part of the book («Law and Agency, Law as Regulation») explores how law shapes action in two different ways: On the one hand, law provides tools for exercising individual and collective agency; on the other hand, it constrains and shapes social, political, and economic action. In this sense, law is both a weapon *against* the weak (the predominant perspective of critical legal studies) and a weapon *of* the weak (an often neglected aspect of law). In the third and final part («Law and Identity»), Goodale discusses the complicated relationship between law and the production of identity. In particular, he examines how indigeneity has been shaped by reference to law and he emphasises the importance of international bodies such as the International Labour Organisation ILO in this process. For each of these parts, the book provides a meticulous review of the most recent literature. This makes the volume a useful companion to contemporary anthropological research on law and serves as a guide to further readings.

The choice to group the eight chapters into three parts reveals some insightful and unexpected comparisons – for example in the second part «Law and Agency, Law as Regulation». Chapters 3 and 4 analyse the emancipatory and empowering dimension of law through the study of justice (chapter 3) and human rights (chapter 4). Chapter 5, «Shaping Inclusion and Exclusion through Law», juxtaposes this perspective and asks how law restricts and channels action and how it regulates the subject. Through this arrangement of themes, Goodale brings into conversation studies on property rights with research on the evolving LGBT movement, the regulation of migration, and collective identities. With this eclectic list of topics, the chapter highlights the different registers of law to regulate and restrict action. At the same time, this approach leads to thematic overlaps across the various parts of the book.

Particularly the second and third parts of the book reveal Goodale's own anthropological approach to the study of law and legal processes. The author places centre stage two major themes as the predominant issues in the anthropology of law: the occupation with various aspects of international law and human rights discourses. To a certain degree, these two fields of research reflect the book's hypothesis that law has shifted «from contract to cosmopolitanism» (p. 28) in contemporary world society. It includes the study of international criminal tribunals, truth and reconciliation commission, and indigenous rights. Traveling legal norms, transnational dispute regulations, and the question of legal universalism versus legal pluralism have become important issues.

The same parts remind us how anthropology has been involved not only in the study of law, but also in the promotion of indigenous rights, international law and human rights – with mixed outcomes. Take the example of the juridification of collective ownership of land. Initiatives for the registration of customary land tenure – often pushed ahead by engaged anthropologists – was intended to protect this land from land grabbing. But numerous examples have shown that juridification was only the first step for the commodification of land. In the foreword, Selly Engle Merry discusses what she refers to as engaged anthropology from a different perspective. She argues that law is inextricably linked to the idea of justice. Neglected for a long time by legal anthropologists, who have focused mainly on questions of the nature of law and of social order, the concept of justice has only recently attracted more attention. With this turn to the analytical study of a highly normative concept, the anthropologist as the distant observer is more and more drawn into situations, in which she is forced to take a stance as a political subject.

Overall, «Anthropology and Law» is not the kind of critical introduction the book's subtitle suggests. For a student not familiar with the anthropology of law, it lacks of a broader, explanatory overview. Instead, «Anthropology and Law» deliberately delves straight forward into the recent debates in order to develop Goodale's own approach to the sub-discipline. Through the focus on the imminent past, the book provides the reader with a thorough and critical review of the recent literature. As such, it is a very useful companion and guide through the abundant literature, and the sheer amount of literature reviewed by Goodale highlights how prolific this field of study has been in recent years.