



# LAW AND HUMAN BEHAVIOUR: AN OVERVIEW FROM THE PERSPECTIVE OF SOCIAL-CULTURAL ANTHROPOLOGY

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**Abstract:** In its very basic sense, anthropology's approach law from a comparative perspective and examines it in the socio-cultural context of human behavior. Law refers broadly to the rules and processes that regulate human behavior. Although there are frequently institutionalized systems for making decisions and enforcing them, legal anthropology does not restrict its attention to formal systems of courts or to the laws of the state. It also examines the legal ordering of tribal, band, rural, and urban neighborhoods—places that usually lack specialized legal institutions and codified rules. The anthropological study of law began from 19th-century evolutionary theories in which the form of law revealed the stage of social development. Twentieth-century legal anthropology examines processes of resolving disputes and maintaining social order. Recent scholarship focuses on continuing the relationship between law and culture, law and language, and the intersections among “plural” legal orders rooted in the community, the state, and the region as the perspectives of law in social-cultural anthropology. It examines the contemporary legal complexity produced by post-coloniality and globalization.

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## Introduction

All societies must address the problem of how to maintain themselves over time with a minimum of social disorder and social discontent. This means that every

society must provide a means of managing conflicts, dissent, and deviance, and generally regulate behavior so that it is consistent with social order. The patterned ways in which power and authority are legitimately used in a society to regulate behavior is called political organization. The socio-cultural understanding of the diversity of systems of political organization is one of the primary interests as well as relevant concerns of social-cultural anthropology.

Besides political organization, another aspect of political anthropology is the study of law and social control. All societies maintain an ethos that encourages certain behaviors and prohibits others. This ethos, along with the society's values, makes up the moral code that shapes human behavior. Therefore, the particular ethos of a society represents an attempt to establish social control through various internal and external mechanisms. Internalized norms can shape and influence people's behavior even in the absence of constraints from other people. On the other hand, external mechanisms take the form of sanctions (Senkpi, 2000, p. 153).

Traditionally, socio-cultural anthropologists distinguish two major instruments of social control: norms and laws. Norm is an accepted standard for how people should behave that is usually unwritten and learned unconsciously through socialization. Law is a binding rule created through custom or official enactment that defines correct behavior and the punishment for misbehavior. A system of laws is more common and more elaborate in state-level societies, but many non-state societies have formalized laws (Miller, 2011, p. 243). Therefore, in socio-cultural anthropology, social control of human behavior is the process by which people maintain orderly life in groups as well as communities. Besides informal social control, it may include formal systems of codified rules about proper behavior and punishment for deviation.

## **II. What Is Law?: The Concepts & Domain in Social-Cultural Anthropology**

Apparently, it is a known as well as observed issue that no human society has eternal peace and harmony. Individuals do not always conform to the rules, and they often act in ways that cause conflict and disrupt the social order as well as existing norms. For a society to function satisfactorily, however, there must be some conformity among its members.

In simple societies, conformity is largely achieved through the internalization of norms and values, which is a process begun in childhood and

that most often lasts a lifetime. In complex societies, behavior is also regulated by the internalization of norms, but in addition, behavior is also regulated by the government's control of social institutions and regulatory processes and its capability and willingness to use force.

In every society, some offenses are considered so disruptive that force or the threat of force is applied to those who commit them. So, in anthropological parlance, law refers to a situation where the whole community, or some part of it, is authorized to punish an offender against a society's most important norms. Law may be used to resolve a conflict or redress a wrong.

In more complex societies, these functions of laws belong to separate legal institutions, such as courts. In other societies, law, like power, is often embedded in other social institutions—for example, religion. Law addresses conflict that would otherwise disrupt community life. In politically complex societies such as contemporary nation-states, law addresses both crimes against the state and conflicts between individuals (Nanda & Warms, 2011, p. 241; Miller, 2011, p. 241).

Thus, anthropologists define laws as clearly defined norms, violations of which are punished through the application of formal sanctions by ruling authorities. In the 1960s, ethnologist Leonard Pospisil (1987) attempted to distinguish laws from other social norms, based on his research among the Kapauku tribe of New Guinea. He specified four criteria that must be present for a norm to be considered a law: 1) Authority, 2) Intention of Universal Application, 3) Obligation, and 4) Sanction (Pospisil, 1987; Senkpi, 2000, p. 153).

### **III. Anthropology of Law & Legal Anthropology: a Brief Historical Genesis**

Clifford Geertz has labeled the 'Anthropology of Law' or 'Legal Anthropology,' as lawyers called it, a "centaur discipline." It was first given clear recognition as a subfield in 1941 when law professor Karl Llewellyn constructed a genealogy for it and argued its relevance for the study and teaching of jurisprudence (Vincent, 2010, p. 420). After fifty years, lawyers view legal anthropology as one of the booming fields of jurisprudential study. They view one of their own, Sir Henry Maine, as directly responsible for its beginnings. Almost with one voice, they single out for attention Malinowski's (1926) study of the Trobrianders, followed by accessible work in the absence of visible enforcement; Gluckman's

legal ethnographies of the Barotse in Central Africa (1955, 1965), and Hoebel's work on disputes.

Settlement among the Cheyenne (1941).

Frequently, in their textbooks, Margaret Mead appears in discussions of Natural Law theories; occasionally Clifford Geertz appears in a review of 'Critical legal studies'.

It is worth mentioning that the law professors view both the legitimate tests and confines the anthropology of law. It is a product of an era (1870–1907) when a so-called Black-letter tradition states that law is an internally coherent and unified body of rules predominated in legal education and scholarship. The anthropology of law is much broader than this, embracing many aspects of law excluded by the term normative legal philosophy; along with the consideration of law as an integrated aspect of the culture of the societies across culturally. Anthropologists scrutinize Chinese, Indian, Japanese, Islamic, and African legal philosophies. Moreover, the common law tradition with its ideological emphasis on courts and the judiciary has received most attention, largely because most anthropologists have worked in colonial or post-colonial states in which this tradition was influential.

Anthropology is among the disciplines credited with the final dismantling of the doctrinal traditions of law — the long-standing Enlightenment discourse that defined law as the unfolding of reason. Thereafter, it passed through three phases. Anthropology emerged as a modern discipline in the late nineteenth century; in early anthropology, the early decades were from Western Europe and North America, and nearly all were interested in cultures and societies that were far removed and seemed very different from their own. The anthropological focus on law emerged when early anthropologists became interested in understanding how order was maintained in small-scale societies without centralized governments or formal legal systems.

In the nineteenth century, the paradigm of evolution dominated the natural and social sciences, and early anthropologists tried to understand law as corresponding to different stages of evolutionary cultural development. In the early twentieth century, anthropologists moved away from a focus on evolution to understand culture and focused on law as a means to maintain social order. In the mid-twentieth century, we see anthropologists starting to focus on law as dispute resolution. Here the case study method of disputes gained prominence, particularly among American anthropologists. By the mid

to late twentieth century, an interpretive approach to studying law in culture took hold in some circles through which came to understand law as cultural knowledge.

The late twentieth century also saw a focus on legal pluralism, or the existence of multiple overlapping legal orders, particularly in post-colonial contexts. This period also saw an increasing interest in anthropology in understanding law in transnational and international contexts. The trend finally goes to an examination of the contemporary anthropology of human rights as an aspect of the anthropology of law and their interface, too.

#### **IV. Law and Human Behaviour: Social-Cultural Anthropological Perspectives**

When anthropologists talk about political organization or political behavior or political (legal) they are particularly focusing on activities and the belief pertaining to territorial groups. Territorial groups, on whose behalf political behaviors or activities may be organized, range from smallest communities such as Bands and villages, to large communities, such as towns and cities; too much broader groups, such as districts or regions, entire nations or even groups of nations. Therefore, social-cultural anthropological perspective will see different types of political organization and how people participate in politics and cope with conflict are often strongly linked to variations in food-getting economy and social stratification (Ember & Ember, 2019; p. 300).

Political and legal anthropology are two subfields of social-cultural anthropology (Miller, 2011, p. 234). The former one addresses the area of human behavior and thought related to political power—who has it and who does not, degrees of power, bases of power, abuse of power, relationships between political and religious power, power, political organization and government, social conflict and social control, and morality and law. Legal anthropology is the study of socially accepted ways of maintaining social order and resolving conflict along with the range in the order of politics and social order.

Political anthropologists have discovered differences and similarities between politics and political organization in small-scale and large-scale societies in leadership roles and responsibilities and in the distribution of power. Foragers have a minimal form of political organization in bands; leadership in bands is informal. The tribe is a more formal type of political organization than the band, as we know, comprising several bands or lineage groups with a

headman or headwoman as leader. Chiefdoms, on the other hand, may include several thousand people. Rank is inherited, and social divisions exist between members of the chiefly lineage and commoners. The state is a centralized political unit encompassing many communities and possessing coercive power. States evolved in several locations with the emergence of intensive agricultural milieus. Most states are, in fact, hierarchical and patriarchal.

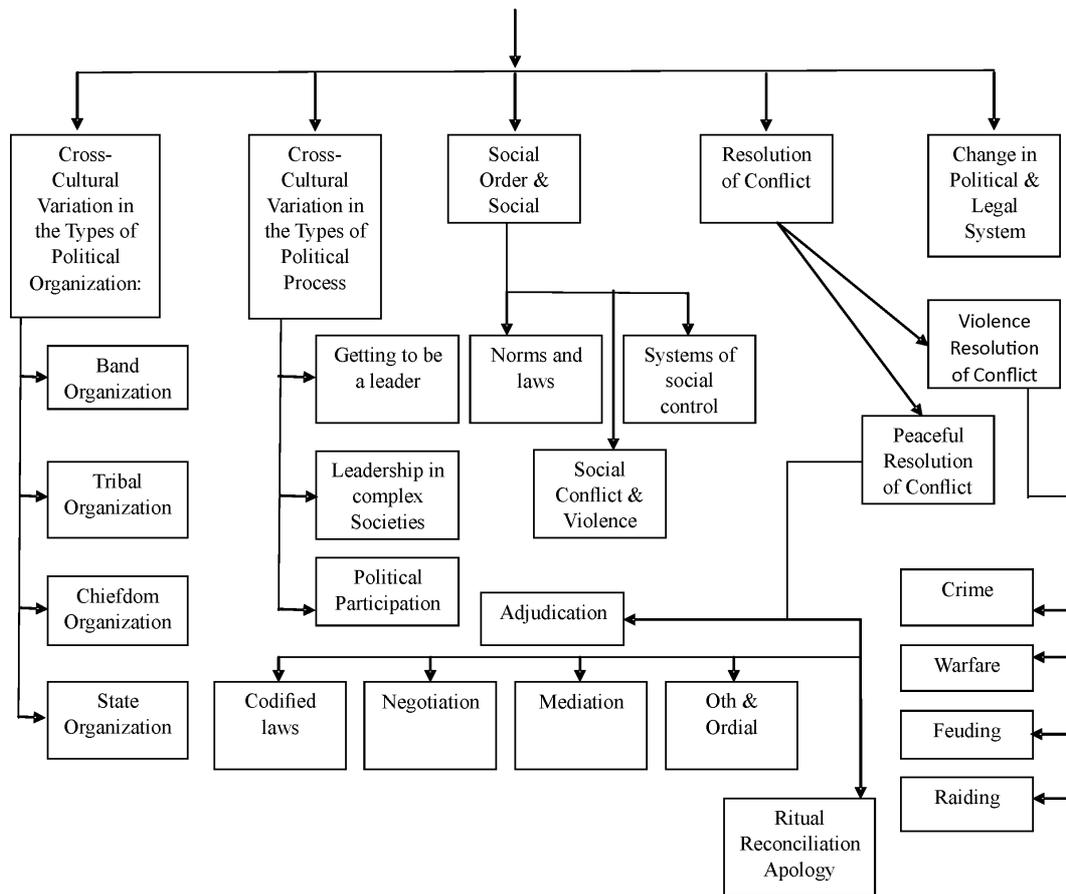
Legal anthropology, like a counterpart, encompasses the study of cultural variation in social order and social conflict. It is worth mentioning that the more recent approach of critical legal anthropology points out how legal institutions often support and maintain social inequalities and injustices. Legal anthropologists also study the difference between norms and laws. Systems of social order and social control vary cross-culturally and over time. Social control in small-scale societies seeks to restore order more than to punish offenders. The presence of a wide variety of legal specialists is more associated with the state than with small-scale societies, in which social shaming and shunning are common methods of punishment. In states, imprisonment and capital punishment may exist, reflecting the greater power of the state. Cross-cultural data on levels and forms of conflict and violence indicate that high levels of lethal violence are more often associated with the state than with earlier forms of political organization. Social conflict ranges from face-to-face conflicts, such as those among neighbors or domestic partners, to larger group conflicts between ethnic groups and states.

It is also a mentionable fact that social-cultural anthropologists are turning their attention to studying global conflict and peacekeeping solutions. They address issues involving the role of cultural knowledge in dispute resolution and how international or local organizations can help achieve or maintain peace.

The anthropological study of change in political and legal systems has documented several trends, many of which are related to the influences of European colonialism and contemporary capitalist globalization. Post-colonial states struggle with internal ethnic divisions and pressures to democratize. Ethnic politics has emerged within and across states as groups seek to compete for increased rights within the state or for separation from it.

### ***Domain of Law: Socio-Cultural Anthropological Perspective***

Political and Legal Anthropology & Integrated the Holistic study Political and Legal Systems in Culture (Politics, Political Organization & Leadership)



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## **Legal Pluralism**

It has also been recognized and considered the concept of Legal pluralism by the social-cultural anthropologists after 80s. It is the co-existence of different legal systems within large culture. Since this is based on the proposition that the state does not have a monopoly on law, lawyers find the concept as well as domain problematic. In post-colonial societies recognition of pluralism may be viewed as road block to nation-building and development. Analytically, legal centralism and legal pluralism are contending processes. Legal centralism impinges on local knowledge's and peripheral situations of resistance, contingencies or simply pure contradictions. Anthropologists analyze competing legal registers, each with its own historical trajectory and historical consequences. They view legal pluralism in the light of historical struggles over sovereignty, nationhood and legitimacy (Vincent, 2010; p. 422).

## **Conclusion**

Anthropologists approach law from a comparative perspective and examine it in cross-socio-cultural contexts. Although there are frequently institutionalized systems of law for making decisions and enforcing them, legal anthropology does not restrict its attention to formal systems of courts nor to the law of the nation state along with the legal ordering of bands, tribes, villages and urban neighborhoods. But the satisfying continuities and discontinuities co-exist within anthropology of law. New world- historical issues challenge the established competence of jurisprudence: law as hegemony; law as war by other means; the jurisprudence of terrorism and legal restraint; civil and human rights; sovereign entitlements and oppositional legal practice. Legal ethnography worldwide now focuses on how difficult it is to 'get justice'.

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