PoLAR: Political and Legal Anthropology Review

Maria Sapignoli, Max Planck Institute for Social Anthropology

The great strides taken in the anthropology of law that have made it a vital sub-discipline have largely been the result of steady extensions of its research agenda into new areas of study and sites of ethnographic research. Anthropology has looked at law, how law engages and disengages with different aspects of people's lives, and debated its meaning and applications, while questioning what the law does in practice, with all of the limitations and possibilities of the way it is applied.

My contribution to this conversation on the future of legal anthropology offers an example, one area in which its research agenda has extended, based on my interest and experience in the study of global (legal) institutions and in the development of legal personality (including that of the non-human) and its implications for the construction of the social. I will begin with a few main points about the field today and then work toward some speculative ideas about one of the areas where the field is likely to be heading in the future.

In recent decades, the anthropology of law has intensified its analysis of global organizations, how they work, what they produce, and the effects, intended and unintended, they have on people's lives. This starts with ethnographic perspectives on the people who work in them. For instance, ethnographic research has been done in truth commissions, a wide range of UN agencies, and several financial regulatory institutions. Anthropologists have considered global organizations as places of advocacy, learning, collaboration, and expertise, raising questions of power and the structures and technologies of knowledge production, including the "regimes of visibility" by which knowledge is strategically managed. Important work has also recently been done on the production of globalized measurements and structures of accountability, with implications for the management of difference, the rule of law, and human rights implementation, among other key issues. Anthropologists have explored the methods and consequences of anthropological collaboration with international experts in global legal processes, including the influence this collaboration has on both social research and on the production of global governance (Niezen and Sapignoli 2017).

Ethnographic studies have shown that global organizations are not monolithic entities and that they are deeply influenced by the power of states and the global economy, but also by individual agency. These areas of study include the ways that organizations produce values and use them to guide policy decisions, often conceived and reinforced by formal regulations. Ethnography has the ability to bring out the changeability of organizations in terms of structures and roles, their fragility, mainly pointing to structural incapacities and, in part, to sources of tension between personal ideals and institutional practice. More often than not, ethnographic discoveries tell us about the human and accidental aspects of law, dimensions that are concealed by the tendency of institutions to limit visibility and build illusions of impartiality, transparency, equity, and procedural fairness.

The main trajectories of the anthropology of legal institutions have therefore already been more or less clearly identified, including their subjection to manipulation by the powerful. Still, this points to the future in the sense that I think not enough has been done in fields that anthropologists are already exploring. One of them has to do with what these institutions produce in terms of anthropology and ontology, their way of interpreting and categorizing the world.

This final point brings me to a more speculative part of the discussion, to the second question that has guided the roundtable: what are some of the directions that the sub-discipline of legal anthropology will take? This relates to the challenge of saying something more about the *future of the anthropology of law*.

The future of legal anthropology will almost certainly involve exploring new fields that open up through social change and the corresponding transformations in legal practice, following people's use and understanding of the law and where the law travels and changes form as it creates new institutions, makes use of new tools, and opens up new areas of practice. In this uncertain and precarious world in which legal processes tend to enter uncharted territory, I think that anthropologists are more than ever called to practical and public roles to engage with issues of global concern by making the discipline and its insights legible to those who design policy and make decisions and engage critically with the limits and possibilities of law and what it does.

One of the many areas where the law—and hence the anthropology of law—is undergoing rapid change is in environmental regulation. Here, I am thinking more specifically about the relationship between law and eco-politics, the urgent sense of environmental insecurity and the problems of knowledge and institutional incapacity with which it is associated. One area in particular that could be interesting to explore in the context of this crisis is how legal intuitions fabricate (to use the words of Pottage and Mundi (2004) the objects of their concern, not only in terms of their interpretations and designs of human life, but also of the non-human, particularly in the epoch (aptly described by Kohn) "in which human and nonhuman kinds and futures have become so entangled that ethical and political problems can no longer be treated as exclusively human problems" (Kohn 2015: 311).

Nature has been legalized/juridified in various ways, in various contexts. In global governance and environmental activism, nature has been a key area of concern and has taken various forms, of which I will mention two.

First, as a source of environmental and economic values, nature has been organized, controlled, and managed by laws oriented toward its protection by acting, for instance, to add precision to its market value and the property regimes and uses associated with it. This trend is also evident in the development of transnational agreements and international measurements in which the protection of nature is commodified by states and corporations in regimes of carbon exchange, "debt-for-nature swaps," and promotion of the so-called "green economy." In fact, major initiatives of global governance, the various protocols, REDD+, and the Paris Agreement are based on financial incentives and market-based strategies for greenhouse gas reduction and other mitigating measures for climate change.

Second, another trend can be seen in the international movements that are advocating for juridical/legal personhood to be applied to natural phenomena, with their own rights and not as a means to benefit humanity, often with indigenous peoples acting as stewards. This perspective is clearly represented in the pioneering work of Christopher Stone (1972), particularly his essay 'Should Trees Have Standing?'. There is, to my knowledge, no (or not yet any) international legal instruments that take this approach, though the World Charter for Nature has proclaimed the intrinsic value of nature and the Permanent Forum on Indigenous Issues is the focal point of UN language emphasizing the rights of nature and of "mother earth."

Law regularly grants rights and imposes duties and responsibilities on non-human persons (for example, on corporations, NGOs, UN agencies, and states). The idea of *nature as a legal subject* has long been common in various regimes of so-called customary law, as well was in the European Middle Ages when animals were tried for various offenses, including murder (Teubner 2006). It has also recently gained traction at the state level, reflected, for example, in the development of new constitutions such as those of Ecuador (2008) and Bolivia (2009) in which the rights of nature (as *Pachamama* or Mother Earth) are legally affirmed. A number of agreements and court cases in various parts of the world have recently had similar effect, such as those in New Zealand, in which a national park and river system have been considered "persons" or "plaintiffs" in the eyes of the law (Rio Vilcabamnda 2011, Whanganui Iwi Agreement 2014). In these cases, the status of the ecosystem changes from property under the law to being recognized as rights-bearing entities, where guardians have been appointed to represent nature's interests with the right to remedy. Some legal scholars, like Capra and Mattei (2015: 162), are advocating for an "Ecolaw", a legal initiative or idea, "capable of considering human laws as part of new laws on behalf of nature and not human interests."

The anthropology of law sits squarely in the middle of this topic. The reconfiguration of the relationship between the human and non-human in anthropology is finding its reflection in the development of new understandings of personhood in international and national law, with important implications for, among other things, our understanding of society and the ways that the rights (and practices) of human persons and collectivities are configured. For the anthropology of law, a question could be, how does legal personhood originate in law? Which kinds of anthropology and ontology do institutions fabricate? What happens if the rights of nature come into conflict with the rights of peoples? Does the juridification of nature displace politics or, on the contrary, does it make environmental crises highly political? How is responsibility or trusteeship for this personhood delegated? And to whom? And, let us not forget the role of anthropology in all of this: How can anthropologists contribute to the debates and interventions associated with environmental justice?

I somehow doubt that this represents *the* future of legal anthropology, but it certainly seems to be part of it, part of a growing concern with environmental justice and security that will likely become even increasingly central to global governance and the anthropology of organizations.

References

Capra Frirjof and Ugo Mattei. *The Ecology of Law: Toward a Legal System in Tune with Nature and Community.* Berrett-Koehler Publishers, 2015.

Kohn Eduardo. "Anthropology of Ontologies." *Annual Review of Anthropology* 44 (2015): 311-327.

Niezen, Ronald, and Maria Sapignoli, eds. *Palaces of Hope: The Anthropology of Global Organizations*. Cambridge: Cambridge University Press, 2017.

Pottage Alain, and Martha Mundy, eds. *Law, Anthropology, and the Constitution of the Social: Making Persons and Things*. Cambridge: Cambridge University Press, 2004.

Stone, Christopher. "Should Trees Have Standing?—Toward Legal Rights for Natural Objects." *California Law Review* 45 (1972): 450-501.

Teubner, Gunther. "Rights of Non-Humans? Electronic Agents and Animals as New Actors in Politics and Law." *Journal of Law and Society* 33, no. 4 (2006): 497-521.

This contribution is part of PoLAR's sixth emergent conversation, which is on the future of anthropology of law.

Political & Legal Anthropology on Twitter

Tweets from @PoliticalLegal

APLA
@PoliticalLegal · Mar 10

The APLA Graduate Student Paper Prize is open! Individuals who are students in a graduate degree-granting program are invited to send papers centering the analysis of political and/or legal institutions and processes by July 31st!

politicalandlegalanthro.org
APLA Graduate Student Paper Prize Competition

4

APLA
@PoliticalLegal · Mar 6

Academic Hiring Rituals Podcast by APLA: Hiring in Sweden

politicalandlegalanthro.org
Academic Hiring Rituals Podcast by APLA: Hiring in Sweden

APLA: Association for Political and Legal Anthropology

APLA Graduate Student Paper Prize Competition

Academic Hiring Rituals Podcast by APLA: Hiring in Sweden

Nominations Open: 2023 APLA Book Prize in Critical Anthropology

Congratulations! APLA's 2022 Book Prize in Critical Anthropology

Stay up to date!

Enter your email address to follow us and receive notifications about new articles and features.

Email Address

Follow PoLAR

Follow PoLAR on Twitter

Tweets from @Polar_Journal

Political and Legal Anthropology Review
@Polar_Journal · May 29

Review article by Annelien Bouland about divorce and legal politics in India and China. These books show that “the regulation of marriage and divorce can, in a given political context, become an important tool of state making.” @AnnelienBouland

polarjournal.org
Review Essay: Divorce, Democracy, and State Making

1

Political and Legal Anthropology Review
@Polar_Journal · May 23

PoLAR is looking for new Digital Editorial Fellows for 2023-24. Fellows develop themes for virtual editions, and work to create new web-based features and initiatives, with wide scope for creative approaches to publishing. Applications due July 15!