Introduction

From Status to Contract to Cosmopolitanism

Broadly . . . this [book] will seek to place the numerous theoretical developments, methodological concerns, and changing ideological approaches in legal anthropology within a historical framework that further recognizes the necessity to address these fundamental elements with a view that is essentially integrative. Through the course of this analysis it will become obvious that the author does not stand on neutral ground vis-à-vis [sic] the various controversies and it is hoped that some small contribution to a more general theory can be made by analysing the relevant concerns both with a view to the past and a view to the future.

It is a particular kind of anguish to revisit one’s writings not just from an earlier period of life, but from an earlier self. Thus it is with some trepidation that I begin this book with the opening lines from my 1991 master’s thesis, memorably entitled “Legal Anthropology: An Historical and Theoretical Analysis,” which I wrote during that halcyon summer seemingly permanently affixed to an aging green leather chair in the old Reading Room of the British Library at the same desk—I was assured—at which none other than Karl Marx had toiled away at Das Kapital.

I begin this text this way for two reasons. First, it serves as an illustration that some things have not—and perhaps never will—change. At a structural level, this book also takes up questions of anthropology and law in relation to a set of broader arguments about their various points of conjuncture and disjuncture. At the same time, in offering a critical introduction to anthropology and law, my own perspectives naturally shape this volume’s form, organization, inclusions and omissions, and general claims about the extraordinary (if at times unrecognized) contributions that anthropologists continue to make to both the theory and practice of law. In this sense, I am relieved in advance of the obligation
to produce an encyclopedic, globally comprehensive, account. On the contrary, what follows is an admittedly idiosyncratic examination of the many ways in which anthropologists have transformed—sometimes against their better judgment—the study of law into a cutting-edge domain of critical social science, engaged research, and ambitious social and ethical theory.

But second, to begin with language from a 1991 study of the anthropology of law is also a reminder of just how much the field has changed since then. Indeed, this fact is the reason for one of the book’s central elements: its focus on developments during the various periods of the post–Cold War and beyond. As masters of the serendipitous, anthropologists found themselves confronting historical transformations in which law appeared to be playing a central, if contested, role. In my own case, I went to rural Bolivia in 1998 to conduct doctoral fieldwork on the (now painfully) naïve assumption that I would discover the secret to peaceful coexistence by studying what Karl Llewellyn and E. Adamson Hoebel had called, in The Cheyenne Way (1941), the “trouble cases,” that is, those moments of conflict through which the contours of law become most visible. And although I did, indeed, study many trouble cases, mostly involving fights between young men during fiestas and “land invasions” by llamas left unattended by their very young shepherds, I did not, alas, discover the secret to peaceful coexistence.

What I did discover, unexpectedly, was a window onto the ways in which the end of the Cold War was transforming the relationship between law and society—a kind of transformation that anthropologists, particularly those in the field, could not ignore. By the late 1990s, rural Bolivia had become a hotbed of human rights activism; indeed, the broader rubric of development was being reconfigured by coteries of mostly Western European NGOs into a mechanism for the promotion of human rights ideology. Among the forty villages and hamlets in which I conducted research during that year, many of them had entered into transnational collaborations that blended human rights education with more traditional forms of assistance such as road building, microfinance, and agricultural investment. But it soon became clear that the idea of human rights was not being introduced primarily as a new kind of legal strategy that could be put to use in courts or within movements for social and political change. Rather, it was being taught—in
the ubiquitous workshops that I frequently attended—as a new form of self-regard, a new form of being in the world, one that was anchored in a radical theory of human equality.

I was compelled, therefore, to adapt my research accordingly. From a more recognizable study of community dispute resolution, the relationship between state and local forms of law, and the ways in which law came to constitute an important “semi-autonomous social field” (Moore 1973), it shifted to a study of the practice of human rights as an emergent transnational legal and moral discourse, the influence of international and transnational norms in shaping ongoing social and political conflicts in Bolivia, and the resulting microprocesses of moral change and resistance that Sally Engle Merry (2006b) would later describe as “vernacularization.”

But my experience was not an isolated one. These methodological shifts, as we would come to learn, were signaling the development of a new anthropology of law across a range of field sites as a response to a widening recognition that the post–Cold War landscape was one on which law and politics were being redefined in relation to each other (Wilson 2001); the practice—if not the principle—of state sovereignty was being challenged from both below and above (Coutin 1994); the coalescence of transnational legal networks was reshaping traditional understandings of global and local, inside and outside (Riles 1998); and, at least in the early and middle years, the spread of human rights and new rhetorics of justice was signaling the return of utopianism as a force in global politics (Niezen 2010).

Yet except for the visionary few, these seismic shifts, and their profound implications for the anthropology of law, were difficult to imagine back in 1991; our intellectual worldview was still very much shaped by a set of existing narratives about the history of the field, its potential and limitations, and its relation to other branches of the wider discipline. Even though Sally Engle Merry forecasted many of the changes to come in her 1992 Annual Review of Anthropology article, “Anthropology, Law, and Transnational Processes,” it took more than a decade of research, trial and error theorizing, and institutional development for the shape of the new anthropology of law to come fully into view.

The nine chapters in this volume focus on these developments in the anthropology of law since the end of the Cold War. In this way, the book