Chapter 16: Applied anthropology of law, postscript - update apr09-jan10

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The present part of “Law and Anthropology: Outlines, Issues, Suggestions” is an abridged version of the text of the hardcover edition, shortened by certain subchapters or other sections. The text and the footnotes left out are indicated by the words: not included. The reader who wants to see these omitted parts is referred to the hardcover version (see preceding paragraph).
Chapter 16: Applied anthropology of law

Chapter 16 focuses on applied anthropology and contains a renewed appeal, directed to the younger generation, to become engaged in culture-pertinent legal work. Currently much debated issues are ethnocentrism, modes of thought, identity, inalienable rights, problems related to the US, Europe, and Islam, as well as multicultural, ecumenical, foreign aid, and comparative issues.

Applied anthropology is the use of anthropology in a prescriptive sense. Anthropologists are sometimes asked to prepare economic or political steps to be taken by international organizations, national governments, non-governmental organizations (NGOs), foreign aid groups, military planners, environmental expert teams, trade unions, etc. More often, they are not asked. Foreign aid desasters and other international planning failures due to neglect of anthropological consultation are being reported elsewhere.

Some international organizations such the World Bank Group from time to time ask anthropologists for advice before loans are granted for certain development projects. This may effectuate the money lending, prevent environmental and personal damages, or stall the whole project. It is said that the United States government consulted anthropologists before embarking on the intervention of the United Nations in Somalia. The difficulty with such consultations rests in the fact that scientific insights are often controversial, and cannot replace political decision even if they are unanimous.

Questions relating to applied anthropology are, for example: Are there chances for applied anthropology in crisis-ridden parts of the world, such as Northern Caucasus, the Balkans, Africa, Indonesia, with the aim to contribute to solving crises? Can one define the issues of applied anthropology which are presently being raised by the intended expansion of the European Union? Does the incipient work of the World Trade Organization, Geneva (successor to GATT) involve issues of applied legal or economic anthropology?

I. Concept

Applied anthropology is the transformation of anthropological findings into political decisions. All branches of politics may receive such anthropological input: Foreign and interior politics, economic, legal, religious, social, environmental, medical, etc., politics. The main working method of applied anthropology is consultation, because the decider(s) will in almost all cases lack an anthropological knowledge. In Carl Phillip Kottak’s words: “Applied anthropology......refers to the application of anthropological data, perspectives, theory and methods to identify, assess and solve contemporary social problems”.

Here are six main pitfalls for an anthropologist who is invited to counsel political decision makers, or who offers her or his consulting services without prior invitation:

- The anthropologist is misunderstood because she or he uses too much of professional jargon without explaining it, or does not realize that a term means different things in anthropological and political context. Not every political decider will know what a moiety is, a matrilineage, or a clan.

- The term “myth” will be understood by the consultee as something unreal and fairytale-like. For an anthropologist, myths are traditional knowledge of a society that does not write and read and thus has the same meaning “transmitted history” has in a literate society.

1 in the 9th ed., at 17 f., see also 438 ff.
- The anthropologist gets too close to what the politically-minded listener intends to achieve. The anthropological advice should always be scientifically weighed and valued, asking for caution rather than for supporting the political goal. It is a different matter when an anthropologist becomes, for anthropological reasons, an advocate for a political goal her or himself. Such advocacy activities, for example in favor of endangered peoples or animals, or against genital mutilation, infanticide, or senicide, are ethically permitted, but they should be clearly distinguished from the anthropological professional activity, and the advocating anthropologist should say that she or he intends on doing so.

- The anthropologist’s advice may be wrong. For example, the US government asked anthropologists before the decision was taken to intervene in Somalia to prevent a human catastrophe by famine and get the fighting factions at a round table. The resistance by Muslim clan leaders and warlords was not foreseen. For years, the US government asked no more an anthropologist. The advice given had overlooked the segmented structure of the Somali clans.2

- The anthropologist does not clearly realize that she or he is not the responsible decider. It makes a great difference to draw conclusions from scientific wisdom, or to have to decide and by deciding alter reality.

- The anthropologist may get in trouble because the decision to be taken is to be the result of the work of a team. There may be more consultants from other fields such as agriculture, economy, law, or politics. Seemingly, the various inputs have to weighed against one another. This is a particularly difficult situation because the anthropologist’s arguments may be not some among many, but arising on a different level while influencing the other arguments, or some of them, on a higher or lower point on the decision tree. Then, the anthropologist’ arguments cannot be compatibly weighed against the others. To get this to the attention of other experts may be a near-impossibility.

- This easily makes the anthropologist suspect to be obtrusive, even arrogant. There is that joke that describes the typical Navajo family: husband, wife, children, grandmother, uncle, aunt, and the anthropologist.

II. Ethical standards

Difficulties as these have led to ethical standards accepted by the professional organizations. For example, the American Anthropological Association (AAA) gave its members an ethical code in 1971, the present version of which is of 1997. It distinguishes three kinds of professional duties of an anthropologist: duties to people and animals, duties to scholarship and science, and duties to the public.

Responsibility to those studied includes respect, avoiding harm or wrong, preservation of historical records, openness and honesty about the researcher’s goals, and guarding the appropriate confidentiality. Responsibility to scholarship includes sincerity as to reports on received information, non-fabrication of evidence, and preservation of fieldwork data for posteriory. Responsibility to the public includes consideration of the social, societal and political implications of work done in the field and its publication, and being candid about their qualifications and philosophical and political bias.3

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2 See Chapter 9 II, above

3 I would include religious and thought-modal holdings in the word “philosophical.”
There are also responsibilities to the host government, also when the anthropologist’s task is to consult that government and the advice is critical. A specifically difficult situation arises when the anthropologist discovers cruel and inhuman treatment among the people she or he is studying. Is the anthropologist bound, by own *personal* ethical standards to intervene when confronted in the field with torture, infanticide, senicide, forced abortion, child labor, or inhuman punishment? Or is the anthropologist inhibited by *professional* ethical standards from any intervention into the law, customs or traditions of the people to be researched because no anthropologist in the exercise of this profession is entitled to introduce culture change? I do not know a single anthropologist who, caught in this dilemma of personal and professional ethics, has not followed his *personal* ethical standards, using if necessary polite subterfuges and one or the other ruse. However, such an anthropologist is risking membership in a professional association.

III. Failures (this text lists failed attempts to make use of means of applied anthropology for foreign aid; it is mainly composed of references and, being dispensible here, is not included)

IV. Theoretical areas

*Theoretical* areas where work ought to be done in modern cultural anthropology are no genuine fields of *applied* anthropology. Nevertheless, some should be mentioned here:

- Unity of anthropology as a science, biological and cultural. Role of cognition, and of behavioral studies.

- Non-ethnic anthropology.

- The end of original cultures, culture change, role of television and tourism.

- Paradigm changes from materialist and “Marxist” anthropology to ideational themes such as modes of thought, religions ideologies.

- Anthropological evaluation of early travelers’ and missionaries’ reports.

- Comparison of contemporaneous anthropological research; formerly “objects” of anthropological studies today do “their own” anthropology: Hopi, Indic, Indonesian anthropology, etc.

- Plural and comparative epistemology is a worthwhile field of theoretical anthropology, and contains a hot issue: the “uneasy insight” that cultural data may contradict epistemologies dealing with these data.

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4 Hamburger (1953).
5 On conflicting forums, see Chapter 4 V., above.
- Preparation of political forms of life for new or contested countries and territories such as Somalia, South Africa, Namibia, parts of former Yugoslavia, parts of former USSR, etc.

- Cultural-anthropological expert counseling (“Politikberatung”) for political institutions and politicians, especially in legal, organizational, political, religious, and economic anthropology. ***The eight German academies of humanities and sciences have repeatedly been asked to engage in political counseling, but not much has been come from such proposals***.

- The relationship between anthropology and sociology has become a general social science topic. It is correct that one of the strengths of anthropology lies in its being versed in ethnography and ethnographic methods. The analyses discussed above produce rather precise results. Sociology has its own methodology. Sociography is a field, for instance in the Netherlands, but not in Germany. Kottak thinks that anthropology’s ethnography looks more into the details of a specific situation than sociology (and political science) with its predominant method of survey research. Since the death of Max Weber (1920) comparative culture played no prominent role in sociology, and anthropology has since filled a gap left by modern sociology. Anthropology and sociology could move closer together and learn from each other’s methodology. This would be particularly useful for the study of the following problem areas.

V. Problem areas

The following are some problem areas of recent times for which applied cultural anthropology could probably contribute useful proposals;\(^{11}\)

1. Awareness of ethnocentrism

a. It is ethnocentric to assume that the rules and postulates of economics are the same all over the world, namely, determined by capitalism, competition, and markets. Having realized this, and ***rejecting ominous*** ethnocentrism, what can replace them, and under which circumstances? Are there parallels of ethnic and economic exploitation? Is there a “cultural antitrust”?\(^{12}\)

b. The loss of ***influence in*** Laos and Vietnam, and the failures in Somalia, Iran, Iraq and Pakistan have posed serious problems for USA. All have been caused by ethnocentric misinterpretation of local conditions (including the respective modes of thought).

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\(^{8}\) Chapter 6.

\(^{9}\) Kottak, 32, 49 – 55.

\(^{10}\) For details of this debate, see Chapter 1 II. 3. b., above.

\(^{11}\) a proof for this plea in Exotic No More, see note 1166, above.

c. “Exporting democracy” is an idea embraced by many, but in its pursuit hampered by the ethnocentric generalization of the Normannic-Angloamerican type of democracy.

d. The consideration of, besides hundreds of religions, about a dozen modes of thought that help to identify potential steps in the international arena, is not an ethnocentric perspective. The study of the tribes, of animism in the wide and narrow sense, of the Greek Tragic Mind, is indispensable for understanding ongoing international and national developments.

e. Ethnocentrism, foreign aid, and environmental protection and their mutually triangular relevant conflicts are a field of eminent importance.

f. Legal pluralism, unofficial law, and related conflicts of law remain inexhaustible areas of study.

g. Comparative trust (and financial credit) research has already become a popular field – in the wake of various national and international trust-related crises, but more anthropological expertise could only help.

h. Comparative studies of time concepts are still in demand (although some work has been done), and often a clue to resolving cross-cultural issues.

i. identity, source of law, and the issue of generalization v. specification

2. European issues

a. The relationship between citizens and their governments needs anthropological examination, especially in view of superaddition.

b. Part of the problem is how to make a cooperative out of several cooperatives: Does the EU have 490 million or 27 members, and do therefore the 490 million pay taxes to Brussels, or the 27? From this depends whether for joining the EU a national referendum is appropriate. ***Do the national citizens which are reluctant to join (or to cooperate with) the EU – in Britain, Ireland, Poland, Chechia, etc. - and therefore favor a referendum - really want to file two income tax declarations instead of one, as US citizens do?***

c. Another part of the problem is that the only Slavic tribe that acceded to the pledge-of-faith system are the Slovenes. Other Slavic tribes traditionally possess chieftaincy and consensus systems and therefore prefer determining their relationship to Europe bilaterally (Poland-Brussels, Prague-Brussels, Bratislava-Brussels, etc) instead of determining it as a membership along with other members. For this, societal inertia of leadership forms, particularly in the context of culture change, deserves to be studied.

d. Multicultural society, and – in broader formulation – forms of cultural neighborhood, need extensive study. This applies to Europe, but also to other parts of the world.

e. Comparative research is needed on the Frankish cooperative and the Franco-Normannic system of restricted responsibility of government with a view to the constitution of the EU.

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13 See the cites in note 259, above.
f. The anthropology of borders within and towards the outside of Europe is a rich object of study.

g. The intended EU membership of Turkey has anthropological aspects, among them free choice of religion and bilateral vs. superadditive understanding of membership as such.

3. Development, human rights, democratization, and socialism issues

a. The difference between the Frankish and the Normannic type of democracy: accountability of elected leadership v. sovereign immunity (cf. art 19 (4) German constitution), act of state, state action, political question – this is a cluster of hot issues of the anthropology of organization. Whether democracy is exportable depends on convincing solutions.

b. A related issue of a. is the dependence of the rule-of-law concept on the chosen type.

c. For receptions of democracy in developing and threshold countries, which type fits anthropologically best?

d. and what depends on what: democracy on the rule-of-law, or the rule-of-law on democracy? Historical anthropology might help.

e. National, regional, thought-modal, or global human rights?

f. Accountability of leadership and judicial review – two sides of one coin?

g. Liberal-economical as-if-competition or Marxist use value (cf. Chapter 10 II. 15, above)? Understanding this choice – maybe culture by culture - decides between freedom and tyranny.

h. For Africa, shall we agree with Bishop Desmond Tutu, the Nobel laureate, who on June 26, 2008 said, in a broadcast about President Mugabe’s persecution of political opposition in Zimbabwe, that (if Mugabe’s claim should be ubuntu) “we should never take the word ubuntu in our mouth again”? But then, should ubuntu be replaced by superaddition, that is, by regarding the whole as being more than the sum of the parts?

4. Russian issues

a. What has been said under 2 c. also applies to Russia. Traditional chieftaincy verticality prevails over membership. Societal inertia of leadership forms needs comparative research. If the Breshnjew Doctrine is still in force, what are the consequences?. The dismissal of Russia into an unfettered Hayekian liberal market system under the influence of neoclassic Chicago School and Harvard idealist professors in 1990 led to unequal distribution of wealth and calls for an antitrust law guarding the freedom paradox. “Antitrust à la Russe” by locking up oligarchs in Siberia may not be a promising solution in the long run.

b. Are exchange value, use value, form of government, and the end of the Socialist Camp contextual?
c. Who were the Varangians (Waräger, Warjagi, Eidgenossen)? To whom did they swear the oath, and what did the oath contain, e.g., assisting one another on armed trading expeditions, similar to those undertaken by the Franks, Chinooks, and Rio Grande Puebloans? Did their oath derive from the Frankish pledge-of-faith tradition? How far south did the Varangian pledge-of-faith go? To the Kiever Rus? Why did the Varangian pledge-of-faith vanish in the East of Europe, but its (probable) source, the Frankish-Normannic pledge-of-faith win in the West of Europe and become, anthropologically, the guideline for Western democracy, rule-of-law, and social and economic welfare, until today? Is this vanishing due to the influence of Christian-orthodox byzantinism? Is the suppression of Varangian pledge-of-faith (logically including superaddition) by Ivan Grosny and Peter the Great reversible?

5. Islamic issues

a. Does the rest of the world need to learn that Islam does not tend to reciprocate?

b. Does the world need to learn that Muslims cannot be deterred (a. and b. underlie the strictly monotheistic God-willing caveat, strict monotheism defined as human sole individuality in front of God, not of men).

c. Is Islamic disunity inherent? Does it follow from the lack of superaddition which again is a consequence of strict monotheism?

d. Muslim shame (not guilt) culture needs further research. Is El Fadl historically right?

e. Islam, Parmenidean judgment, Platonic dialog, and Islamic Neoplatonism need study

6. Ecumenical issues

Interreligious and, for Christians, inter-church contacts deserve anthropological study. E.g., Russian chiefhood traditions may be in the way to overcome the Great Schism.

b. Ecumene urgently needs anthropological study of animism and Greek Tragic Mind.

7. Tribal issues and issues of legal pluralism

a. In which direction should the doctrine of dependent sovereignty of US American Natives be further developed, and does this doctrine look promising for other situations of legal pluralism involving indigenous peoples?

b. Could this doctrine be simplified? Should it be?

c. In these situations of legal pluralism, are there inherent limitations to the „plenary power” of the governing institutions of the mainstream culture, such as Congress in the U.S.A?

d. What are the merits, or disadvantages, of the reservation system?

e. Do reservations need an economic basis?

f. Are there other ways as reservations to regulate cultural diversity, applicable - e.g. - to the Balkans (Bosnia, Kosovo, etc.)
g. Would personalized - instead of territorial - federalism be a solution? Are there historical examples of personalized federalism?

h. What are the forms and preconditions of peaceful cultural neighborhood?

8. United Nations issues

a. Minorities studies and policies profit from anthropological consultation, which may not infrequently show that the “minority” is in reality a second or third nation within a nation.

b. The same holds true for foreign aid and transfer of technology studies, as well as for

c. migration studies, which include the attitude of recipient countries: hostility v. integration policy

d. environmental and endangered species studies, and

e. last but not least for endangered peoples studies. The tragedy of many an endangered nation, tribe, clan, or lineage calls for more awareness which can be promoted by better education in cultural anthropology. The Salish Indians once applied to the US government to be included in the national program for the protection of endangered species.

f. The anthropological UN issues all center around a single core question: what is cheaper and more feasible: aid granted to others; or expansion control plus socially and economically fair dealing enforcement (child labor, other ILO standards) plus transborder antitrust at home? With path should the UN follow?

VI. Bibliography


Kottak, Carl Phillip (1985). In: Cernea (see before), 337 ff.