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978-0-521-76704-0 - Public Justice and the Anthropology of Law

Ronald Niezen

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PUBLIC JUSTICE AND THE ANTHROPOLOGY OF LAW

In this powerful, timely study Ronald Niezen examines the processes by which cultural concepts are conceived and collective rights are defended in international law. Niezen argues that cultivating support on behalf of those experiencing human rights violations often calls for strategic representations of injustice and suffering to distant audiences. The positive impulse behind public responses to political abuse can be found in the satisfaction of justice done. But the fact that oppressed peoples and their supporters from around the world are competing for public attention is actually a profound source of global difference, stemming from differential capacities to appeal to a remote, unknown public. Niezen's discussion of the impact of public opinion on law provides fresh insights into the importance of legally constructed identity and the changing pathways through which it is being shaped – crucial issues for all those with an interest in anthropology, politics and human rights law.

Ronald Niezen is Professor of Anthropology and Canada Research Chair at McGill University. He has undertaken wide-ranging international research, including work with the UN Permanent Forum on Indigenous Issues and the Arctic Council. His publications include *The Origins of Indigenism: Human Rights and the Politics of Identity* (2003), *A World Beyond Difference: Cultural Identity in the Age of Globalization* (2004), and *The Rediscovered Self: Indigenous Identity and Cultural Justice* (2009).

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Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore,
São Paulo, Delhi, Dubai, Tokyo, Mexico City

Cambridge University Press

The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by
Cambridge University Press, New York

www.cambridge.org

Information on this title: www.cambridge.org/9780521767040

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First published 2010

Printed in the United Kingdom at the University Press, Cambridge

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data

Niezen, Ronald.

Public justice and the anthropology of law / Ronald Niezen.

p. cm. – (New departures in anthropology)

Includes bibliographical references and index.

ISBN 978-0-521-76704-0 (hardback) – ISBN 978-0-521-15220-4 (pbk.).

1. Indigenous peoples—Legal status, laws, etc.—Social aspects. 2. Human rights—
Social aspects. 3. Public opinion. 4. Law and anthropology. I. Title. II. Series.

K3242.N543 2010

340'.115—dc22

2010022033

ISBN 978-0-521-76704-0 Hardback

ISBN 978-0-521-15220-4 Paperback

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In memory of Ernest Gellner

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[T]he best test of truth is the power of thought to get itself accepted in the competition of the market.

Oliver Wendell Holmes Jr,
Abrams v. United States, 1919

“The public” is a very strange animal, and although a good knowledge of human nature will generally lead a caterer of amusement to hit the people right, they are fickle and oftentimes perverse.

P.T. Barnum, 1850
In Kunhardt *et al.* (1995: 92)

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Preface

One of the significant recent findings of legal anthropology is that institutions of world governance can only really be understood when considered as producers of their own distinct knowledge and practice. At the same time, it seems clear that ideas about world order produced within these institutions are being taken up in local settings by people and organizations that see in them new possibilities for political leverage and self-determination, correctives to their marginalization by states. Legal anthropology in the era of human rights thus faces the challenge of determining how global concepts of rights and identity are navigated and shaped in practice by those who see themselves as the subjects of rights. Between these foci on the institutions of global governance and the local settings of rights claimants is the problem of *legal norm diffusion*, a key issue that helps to define the sub-discipline of legal anthropology.

My approach to this issue, which has turned out to be *the* central impetus behind this book, involves making a case for including within the central subject matter of anthropology the influence of actors often referred to as “the public” or as I prefer, “publics,” groups of actors who are impersonally connected and therefore unknowable through the usual methods of ethnography. Publics are the abstract, invisible intended audiences of outreach engaged in by those with very tangible grievances. And the ideas held by publics do matter, not just because

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of their possible influence on those who hold power, but because of the possibility that publics themselves might be influenced by claimants of rights. This in itself encourages the repositioning of local knowledge and identities toward their public consumers, bringing about largely unexamined dynamics to the recovery and representation of collective selves.

Without being fully aware of the possibilities of this subject matter, I have touched upon the cultural dynamics of popular persuasion in two previous books, *The Origins of Indigenism* (2003) and *The Rediscovered Self* (2009). In these works the public is there, above all in the dynamics of rights-oriented persuasion, but in a way that for me ultimately raised more questions than answers. If courts and international agencies are called upon to make decisions concerning cultural rights, and occasionally in the process to define culture, what are the sources of knowledge from which they are drawing? If the claimants of cultural rights tend to be on the margins of states, what are the sources of inspiration or compulsion (or both in combination) behind their claims? What are the global dynamics at work in the assertion of identity through the direct and indirect pathways of law, through formal boundary construction and through lobbying with claims and performances to unknown audiences? And what are the implications for identity and for the universal goals of human rights of the need to publicly assert one's collective worth and the reality and significance of one's subjection to injustice?

Describing the place of public persuasion in collective identity formation pushes to the limit the trend in anthropology toward abandonment of the long-held methodological principle of working within a clearly defined community in a single, particular, identifiable setting. Trained in British social anthropology in the 1980s, which was then still very much in the afterglow of the ethnographic models of Malinowski and Evans-Pritchard, I found this a difficult transition to make. Part of what has made my focus on the transnational dynamics of public rights-lobbying possible is the growing awareness in anthropology that the "field" is being redefined, not through the vagaries of intellectual fashion, but through

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the changing nature of human belonging. I am therefore making use of a kind of ethnography of extrapolation, in which an intangible, anonymous, largely unknowable community can still be seen to act, in some cases profoundly, on the behavior of those whom we know personally.

This book was supported by the Canada Research Chair program and by a grant from the Canada Foundation for Innovation. One of the principal benefits of this support was my ability to make ample use of the research skills of graduate students. I am grateful to those who helped with this project: Julia Bailey, Maria Eugenia Brockman, Paige MacDougall and Sara Thiam. My principal research assistant, Marie-Pierre Gadoua, made an important contribution to this book, going beyond her mandate by (among other things) introducing me to the Oblate priests (discussed in Chapter 6) and in several instances conducting interviews with them. Two anonymous reviewers of my initial proposal gave me confidence in taking my work in a different direction than I first envisioned. Barbro Bankson, Michael Lambek, Sally Engle Merry and Galit Sarfaty each offered very useful, insightful comments on drafts of the manuscript. I am grateful to those (colleagues and students alike) who provided research material or more casually dropped useful hints or suggestions, among them Carol Berger, Jaye Ellis, Dorothy Hodgson, John Galaty, Peter Jackson, Noorjehan Johnson, Ian Kalman, Lior Miller, Scott Matter, Stanley Riamit, Rémy Rouillard, Garrett Schromm, Kiven Strohm and Mark Watson. I also benefited significantly from the feedback that resulted from presenting various portions of this book in lectures hosted by (in chronological order): the Max Planck Institute for Social Anthropology (which also housed me over a period of months in 2007 and 2008 and provided me with access to the Institute's rich library); the Centre of Excellence in Global Governance Research, University of Helsinki; the Institute for Human Rights, Åbo Akademi University, Åbo/Turku, Finland; the National Network for Aboriginal Mental Health Research sponsored by the Culture and Mental Health Research Unit of the Jewish General Hospital, McGill University; the

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Department of Religious Studies at The University of Tromsø; the Ethnologisches Seminar at Zürich University; the Department of History at the University of Iowa; and the Faculty of Law at McGill University. An open forum call-in broadcast of CBC Radio Noon Montreal hosted by Anne Lagacé Dowson provided me with direct exposure to the opinions and insights of the public, an experience I recommend to anyone whose profession involves the communication of ideas.