Book Reviews

Elizabeth Heger Boyle, Editor

Law, Culture, and Ritual: Disputing Systems in Cross-Cultural Context. By Oscar G. Chase. New York: New York Univ. Press, 2005. Pp. 224. $45.00 cloth; $20.00 paper.

Reviewed by David M. Engel, University at Buffalo

Chase, a specialist in civil litigation at NYU Law School, teaches a seminar called "Culture and Disputing." *Law, Culture, and Ritual: Disputing Systems in Cross-Cultural Context* is an outgrowth of that interdisciplinary seminar. It is a compact book (with a beautiful cover), presented in the clear and genial voice of a dedicated teacher.

Law, Culture, and Ritual begins with an attempt by the author/instructor to jolt readers out of a complacent acceptance of the inevitability of the dispute institutions that happen to be most familiar to them. Chase devotes an entire chapter to the Azande of Central Africa, who use oracles to resolve disputes over witchcraft and adultery. He explains how Azande dispute institutions reflect local belief systems and social and political hierarchies and how, reflexively, those institutions and procedures help maintain class and gender relations. The remainder of the book draws lessons from the Azande example, demonstrating how dispute institutions in every society mirror and help constitute its culture. Aware of recent critiques of the "mirror" thesis, Chase nevertheless contends that, "The metaphysics, values, symbols, and social hierarchy of any collectivity will set the bounds within which it organizes its dispute-handling institutions" (p. 5). Culture imposes limits on what is possible in a given society, even though professional elites exercise some autonomy in devising dispute institutions according to their own specialized interests, and even though transnational influences and legal transplants may relocate dispute institutions beyond the cultures in which they were originally developed.

Our own oracles, according to Chase, are our law courts, where evidence is submitted to the jury much as *benge*, a potentially poisonous substance, is fed to chickens by the Azande. Like the Azande, we know our law oracles are fallible, yet we exalt the *process* by which they render their verdicts, and we surround that process

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with ritual that protects judges and jurors from recrimination or even revenge. Like the Azande, moreover, we have created dispute institutions and procedures that are peculiarly appropriate—indeed, essential—for our society.

Chase identifies and discusses four distinctive characteristics of civil litigation in America: the trial jury, the extensive use of pretrial discovery, the relatively passive role of the trial judge, and the adversarial deployment of expert testimony. He argues that these features distinguish American law not only from that of the Azande but also from other European legal systems and even from the British system that was our common law heritage. The unique features of the American system of adjudication in civil cases derive, according to Chase, from a distinctive American ideology reduced by Lipset to just five words: "liberty, egalitarianism, individualism, populism, and laissez-faire" (p. 51; citing Lipset 1996:31). These culturally distinctive values explain the unique features of American law and the rituals that surround it. Yet as Chase later acknowledges, these values may conflict with one another and, in any event, "culture itself is always contested" (p. 92). Moreover, dispute institutions "do not move in lock step with even deeply held values" (p. 92). These concessions, although entirely appropriate, seem to deflate the more general argument that dispute institutions are the unique products of particular cultures, since those same cultures, when contested or out of step, could with equal plausibility explain the development of completely different dispute institutions.

The book is least convincing when it treats culture as a "factor" external to law that shapes behavior or institutional arrangements or is shaped by law in measurable ways. It is most convincing when it steps back from simple causal assertions and treats culture as a set of widely shared meanings that make certain options more thinkable and doable than others. Geertz, whom Chase cites extensively, rejected interpretations of culture that placed ultimate significance on its capacity to produce particular social practices. In his famous discussion of winks and twitches (1973:6–7, 12), Geertz emphasized that seemingly identical practices may have entirely different meanings, and the value of cultural interpretation is to sort out those meanings rather than simply to assert that culture causes the practices themselves. Chase's ultimate contribution lies in his thoughtful explanation of the cultural meanings of the civil adjudication procedures that have developed in America and elsewhere.

Some readers may criticize this book for its extensive engagement with the now dated dispute processing literature of the 1970s and 1980s. But it would be a mistake to view *Law, Culture, and Ritual* merely as a throwback to that earlier body of scholarship. On the contrary, this book has something new to say about many

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aspects of civil adjudication. I found two chapters especially thought-provoking: one on the discussion of the unique features of civil litigation in America, and the other on the exploration of a recurring tension between discretion and rule of law in American adjudication. Reading these chapters is like sitting in on a well-taught seminar that broadens our understanding of law in society and suggests new directions for future research.

References

Geertz, Clifford (1973) "Thick Description: Toward an Interpretive Theory of Cultures," in *The Interpretation of Culture*. New York: Basic Books.

Lipset, Seymour Martin (1996) *American Exceptionalism: A Double-Edged Sword*. New York: Norton.

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Law, Culture and Society: Legal Ideas in the Mirror of Social Theory. By Roger Cotterrell. Aldershot, United Kingdom: Ashgate, 2006. Pp. 206. $114.95 cloth; $39.95 paper.

Reviewed by Maksymilian Del Mar, University of Edinburgh

Collecting a series of previously published articles of a theorist of the stature of Cotterrell has not only the distinct virtue of convenience, but also offers an opportunity for reflection on the importance of a corpus of individually influential articles now subject to a more holistic interpretation. Add to that mix the slight reworking and updating of some of the articles, and a new introduction and conclusion, and you have the perfect recipe for constructing and evaluating the major themes and aims of a spectrum of work that dates back at least a decade.

The collection of articles is grouped into two parts: the first part is called "Perspectives" and focuses on legal and social theory, while the second is named "Applications" and is subtitled "Comparative Law and Culture." The insights are layered, beginning with the development of conceptual tools within social theory, exploring their impact on legal theoretical issues, and then proceeding toward detailed work in the methodology of comparative law. It is, however, artificial to attempt to separate the conceptual tools of social theory that Cotterrell invokes and develops, for it is the conceptual tools themselves that help construct that object—said by Cotterrell to be "law as institutionalised doctrine" (p. 1). That construction manifests itself in the methodological parallels that Cotterrell is keen for us to recognize between social theory and

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