

**Law, Culture, and Ritual: Disputing Systems in Cross-Cultural Context.** By Oscar G. Chase. New York and London: New York University Press. 206 pp. Hard cover. ISBN-978-0-8147-1651-9.

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Resolving domestic disputes without considerable resort to brute physical violence against human beings is a challenge that various pre modern and modern societies have embarked to respond to in various cultural and institutional contexts. *Law, Culture and Ritual: Disputing Systems in Cross-Cultural Context* is a witty and engaging endeavor to explore, once again, the classical phenomenon of “reflexive connection between culture and disputing processes...” (p. 2). The author, Oscar G. Chase, claims that venues of dispute resolution are embedded in culture, and furthermore institutions and procedures of dispute resolution have deeply affected various cultural settings. As I will point below, the book constitutes a good contribution to our professional knowledge, and it is a must reading, notwithstanding some problems and absence of some necessary theoretical, as well as comparative, discussions.

The possible theoretical relationships between power, culture and disputing processes are analyzed in the introduction. Chase argues, convincingly, that power is a cultural construct since it cannot be de contextualized and in turn it is a constitutive aspect of dispute processes. He criticizes the myth as if processes of disputing are neutral: “Dispute-ways are never neutral as between competing social groups, even if they are in fact neutral as between the individual disputants.” (p. 4). Chase genuine claim is a good departure base for an innovative research. The book aims to provide a cultural analysis of disputing processes since power itself is not merely a structural issue: “The metaphysics, values, symbols, and social hierarchy of any collectivity will set the bounds

within which it organizes its dispute-handling institutions.” [p. 5]. While the book does not invite a new concrete definition of culture, it asserts that dispute process elite are themselves products of culture and likely to produce and reproduce procedures that resonate effectively with culture. Referring somewhat questionably to Pierre Bourdieu, it postulates that law is immersed in the ability of elite to monopolize language and practices. Yet, Chase argues, culture is the setting through which law has its life and meanings.

But what is culture above a set of norms and practices? How and why a society decides on having a specific set of dispute procedures and how those procedures may change? Why elite may agree to have specific institutional arrangements and not others? The rest of the book attempts to reply to those questions with some degree of accomplishment. In the subsequent chapters, the readers find some insightful analysis of a few systems of dispute resolution, primarily in the US, with a limited in-depth study of non-Western procedures. The second chapter of the book narrates a fascinating case of the Azande of Central Africa and their reliance on oracles and ordeals to resolve disputes around infidelity. The readers are asked to learn more about those pre modern procedures of dispute resolution in order to have better perspectives on modernity. The chapter exhibits how the Zande disputing ways have generated patriarchy, and maintained social discipline and obedience to the political elite. However, since critical studies have long demonstrated that judicial procedures maintain the social order and patriarchy (Kairys 1990; Olson 1990), the value of the Zande experience to our knowledge is limited with no additional analysis of case studies about pre modern societies. Furthermore, the author chooses not to develop a significant discussion of cultural relativism and its place in studies of comparative law. In the afterword of the book Chase is arguing for some measures of cultural relativism. Yet, this book refrains from theorization of the need to study comparative law and understanding comparative politics through assuming that no culture may be comprehensible without drilling emphatically into its own virtues and mechanisms (Barzilai 2003).

Instead, the book leaps to insightfully dealing with the North American experience of contemporary disputing systems. The third chapter argues that modern law functions as an oracle. Following a tradition of literature in law and society, partially referred to in this book, Chas is educating us to be skeptical about truth finding: "It is the skepticism that is also an aspect of modernity and that to some extent defines the "postmodern." The contingency, the relativity, the subjectivity of belief cannot be completely suppressed even in a process devoted to the discovery of the truth on which much value depends, for these doubts is another ingredient of the cultural mix. Available truth- and law-finding techniques are fallible and on one level seen to be so." [p. 42]. This argument is evidently rooted in many previous studies (Scheingold 2004), but Chas provides us with an insightful analysis of dispute procedures in the US.

Accordingly, Chapter 4 looks into the exception of the American system of dispute resolution. Tracing its sources in English common law, Chase is analyzing the distinctiveness of the jury system, its virtues and deficiencies. While its embedment in American culture is uncritically referred to by Chase to American individualism and 'egalitarianism', more room should have been devoted in the book to analyzing the jury system's effects on power and culture. Such an effort demands more empirical research and comparative study, both of which are only partially provided. It points to the importance of the jury system to citizenship empowerment, however in a relative unsatisfactory brief and with no in -depth original empirical study.

Similarly, the book offers an investigation of the rather passive role of the judge and the significant weight given to discovery of documents and evidence of experts in American adversarial system. On the one hand, somewhat alike legal realists in the first half of the 20<sup>th</sup> century, Chase insightfully points that the experts involved in trials invoke the myth of law as do the oracles in Zande trials [p. 66]. On the other hand, he circumvents a critical examination of the sources of that myth around law and only very partially uncovers the interests of political elite and economic elite to maintain it. The cultural explanation offered to explicate the exceptionality of the American legal system is rather vague and refers to "egalitarianism, individualism, laissez-faire, liberty, and populism

identified in so many areas of America's social life” [p. 69]. It remains, however, to examine how such an explanation is in some disjunction from previous studies that trace the intergenerational and genealogical sources of the myth of law as ‘professional’ and ‘objective’ (Fitzpatrick 1992; Barzilai 2004).

The exceptionality of the US legal setting is only one facet of the effort to better understand the reflexivity of culture and disputing systems. Chapter Five is focusing on the rise of discretionary power as imminent part of judicial disputing processes. Two main developments are underscored as sources of discretion in disputing processes. First process is the rise of business efficiency and private economy, which have imposed pressures on having more inclusive and accessible legal systems that in turn generate more de centered political, social and economic life. Second process is the uncertainty and lost of faith in the rule of law. In this cultural context, Chase successfully explicates why the development of discretion serves power: "Observe, then, that discretion fits rather well with individualism. It is, after all, the facilitation of individualized justice that is discretion's claim to legitimacy. A litigant might well accept even dramatic growth of authority if convinced that it would lead to more respect for his particular condition." [p. 92]. At this juncture, the reader is missing a theoretical junction between the finding that discretion has maintained political power amid privatization, and critical studies that have conceived discretion as a central phenomenon that legalizes the very essence of capitalist order.

We need to de center our vision of disputing systems. Indeed, the sixth chapter explicates the cultural reasons for the development of the ADR [alternative dispute resolution]. The book is successful in pointing out that ADR in the American setting since the 20<sup>th</sup> century, while having its historical roots in English settlers’ communities, has been originated in the judiciary interest to ease the overload on its courts. More interestingly, however, the book is insightful in bringing to the fore other explanations. First, counter cultural forces that have protested against the hierarchy of the judges in courts and protested the faulty requisite to be dependent on lawyers. The second force has been privatization that has encouraged out- of- court or de centered courts’ means of

dispute resolution. However, the chapter is lacking comparative perspectives. The literature on mediation is vast, and the accumulative comparative knowledge is insightful. Why not to mention the TRC [Truth and Reconciliation Committees] in South Africa and Latin America, or private judging in Middle Eastern societies to inform our insights (e.g., Gibson 2004)? More comparative research would have enabled us to examine reflexivity of culture and law in more detailed and powerful ways.

Procedures in law have a substantive function of legitimizing it. Chapter 7 is the most important chapter in the all book since it theoretically advances our understanding of litigation as ritual and law as a setting of rites. Chase powerfully demonstrates that: "These qualities of ritual empower it to affect human belief and behavior because it enlists emotion in the service of persuasion." [p. 116]. The rituals in courts alike the special formal cloths, lingual formulations of arguing, and rules of evidence and behavior, as part of litigation, are ceremonies of transformations through which the judges empower themselves and litigants are yielding to judicial power. These rituals are also de personalizing social relations in the courtroom and around it, in avenues that mythologize courts and judges.

Disputing processes are significantly influencing society. While this argument is one of the fundamentals of this book, its analysis in Chapter 8 is rather secondary and is not well elaborated. Chase is mainly relying on previous theoretical studies, and is hardly using new data: "That a set of social practices predominant in one area of human life, such as disputing, can importantly influence practices, beliefs, and norms in other areas of society has been recognized by, among others, Pierre Bourdieu." [p. 127]. While the book is harnessing studies on the generation of culture, through institutional processes, it is not well explicated why and how the influences of disputing processes, as a unique field of human practices, are significantly different from any other routine practices that affect culture. However, since the presumption is that disputing processes may be constitutive sources of cultural change, the author concludes is book in inviting policy makers to consider how public policy reforms of law are affecting the overall culture. Thus, as Chase claims, even if canceling the civil juries in the US will make trials more efficient

and less costly, their importance to the empowerment of citizenship outweighs such a move of reform. The book recommends policy makers to consider that: "The jury is an institution that serves well the functions Kelman and Hamilton describe as important to the maintenance of a nonauthoritarian society. It promotes individual agency, dispersion of authority, and the recognition of multiple perspectives. This cultural role should not be ignored." [p. 140].

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