

Esther Abin
Book review
Institute of Law, Politics and Justice
Keele University
© June 2008

Law as Culture: An invitation

Lawrence Rosen, *New-Jersey: Princeton University Press, 2006, Pop. 211 + Index, ISBN-13: 978-0-691-12555-8; ISBN- 10: 0-691-12555-4*

Law as Culture could be quite a journey for those who viewed law as a sententious and untouchable discipline. Lawrence Rosen settles straightaway the reader in the adventurous and exotic world of anthropology. And the rest of the book is framed within this postulation: “Human beings possess the capacity to create the categories of their own experience, and this capability, having largely replaced instinct, came before – and was instrumental in creating – the animal we have become.” (p.3).

For Rosen, law is one of these categories, both arisen from a human (in progress) experience and asserted as a natural and immanent order. Law would constitute, as such, a micro-cosmology that would create its *own* world as being *the* world. Rosen travels with his readers through a few of these worlds, more precisely, a few of these ‘legal orders’ and seeks to put their multiple origins in perspective. Throughout the unfolding of the origins of law, Rosen emphasises its instrumental function in legitimising a particular social order, a particular moral realm, and in asserting a particular wielding of power. It is mainly argued that law and culture are ‘inter-laced’ and that the power of law relies on its capacity to create a ‘common’ sense that cannot be otherwise but ‘particular’.

Rosen devotes an important part of his book to analysing the ‘creation of facts’. He notably relates the evolution of law to the evolution of knowledge and ignorance and, proportionally, the evolution of certainty and uncertainty: law has become the ultimate instrument in creating an order able to resist the rise of doubt after the fall of scholasticism.

An original insight is given on the English Enlightenment and the way it produced the legalisation of material facts and empirical realms as being sources of evidences and, accordingly, of the judicial assertion of certainty, probability, and reasonable doubt. Arising from the crumbling of the Western theological authority, law has had to justify an increasingly controversial moral order, which, yet, remained essential in compensating the lack of factual evidence of certain ‘hard cases’. Paradoxically, the expansion of uncertainty, resulting from the increasing complexity of facts, has entailed a consolidation of legal and moral categories which the social order has been coerced to refer to. Rosen gives the example of how the idea of ‘reasonable doubt’ became the standard for jury determinations in criminal cases.

One of Rosen’s most persuasive arguments is on the interpretation of law: stressing the continuous change of law, he tackles the idea that law can ever be permanent. The authority of law and its uncertain foundations would be, somehow, two sides of the same coin: “the ‘certainty’ of law depends of the ‘uncertainty’ of its basic concepts” (p.92). From this perspective, Rosen disparages the concept of “natural law” and rather points out a process of ‘naturalisation’ of law. The ‘representation’ of a fact, as an object of legal interpretation, functions as an essential ritual in re-ordering an event within the scope of a particular culture and its own hierarchy of values. Furthermore, Rosen gives a very interesting insight in describing how law, in order to be respected, has always been ‘disguised’ as an object out of the human realm.

The strength of the book is also its weakness: the argument is ambitious and important and may require more references to the literature that has enriched (at least since Levy-Strauss) the anthropological work on culture. Instead, Rosen approaches the subject *in medias res* and uses a myriad of examples to create and simultaneously illustrate his own argument. The organisation of

his ideas is sometimes difficult to follow and the reader can be confused in understanding the knitting of Rosen's argument and examples. Although, it may just be that the style fits with the thesis: it reflects the 'culture' of Rosen's discipline, leading each example to create its own realm of ideas. To what extent is it, nevertheless, legitimate to draw theories out of anthropologic studies?

Rosen, indeed, throughout the multiplicity of his locus of analysis, manages to avoid any form of generalisation. However, the profusion of his examples creates a certain disorder that leads him to reassert the same argument several times throughout the book. By doing so, the reader can have the impression that *Law as Culture* gets bogged down in an avalanche of 'case studies' and does not end with much dynamism and concision.

Law as Culture is quite appealing in enquiring further and 'elsewhere' the cultural construction of legality. The book can be recommended as a useful introduction to 'cultural studies' and anthropology and remains a beneficial reference to a wide range of academic scholars.