

## BOOK REVIEW

# Cutting Edge Synthesis of Modern Work on Culturally Reflective Legal Systems

LAW, CULTURE, AND RITUAL:  
DISPUTING SYSTEMS IN CROSS-CULTURAL CONTEXT  
(Oscar G. Chase). New York, NY: New York University Press, 2005.  
\$45.00 (hardcover).

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### I. INTRODUCTION

Around the world in one hundred forty pages, this cerebral book examines “how others do it” in order to provide a more thorough understanding of our own legal disputing practices and forums. In so doing, the author begins the book by dedicating an entire chapter to the Azande culture’s consultation of the *benge* oracle who feeds a baby chicken a small quantity of poison. If the poison-fed chicken dies, the defendant is guilty. If the poison-fed chicken lives, the defendant is innocent. Hog wash? Not to the Azande people, for this practice has been deeply embedded in the Azande culture.

Such is the undertone of this book—full of spiritual and ritualistic references, with outright cultish undertones at times. From a judge’s black robe, to the Athenian marble columns of the Supreme Court, and the preacher’s box-like lectern—our judicial system is based on respect of the “High and Mighty.” Not only does a court in our dispute system substantially affect the culture of the society in which the court sits, but the culture of the court’s jurisdiction affects the court as well.

The majority of the audience of this book review is practitioners and scholars in the ADR field; it is, therefore, essential that I go no further without explaining that this book is not purely about ADR, or even necessarily about law in and of itself. Instead, it is about the reflective nature

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of how a society instills and influences that society's own official dispute system. Nonetheless, for the practitioners and scholars interested in furthering the dispute resolution movement, understanding this book's message is essential. The book offers an insightful look, through use of examples, at not only how a dispute resolution process influences the culture in which it is practiced, but how a culture influences the dispute resolution process as well. If the author's assertion is correct, all alternative dispute resolution mechanisms exist not only because the judicial system allowed for their creation, but also because they are reflective of a culture's needs and desires.

## II. THE WORK'S ACCOMPLISHMENTS AND ASSERTIONS

From consulting chickens, to juries, to judges who are not allowed to consult with witnesses, societies across the globe handle disputes in different ways. Dispute systems around the world are not only created by a society's founding fathers, but each dispute system is also reflective of its society as well—this is the central premise of this book. Not only does the legal system influence the local culture, but the culture itself influences the legal dispute process as well.

The author, in order to assert his thesis, treats the book as a pyramid, laying the groundwork of his assertions in the early chapters while building up to his final premise in the ninth chapter. In so doing, the author does not merely make assumptions nor does he merely summarize what other great scholars have already stated, instead, he actually takes the work of countless scholars, including E.E. Evans-Pritchard, Richard Posner, and Mirjan Damaska to name a few, and creates something that is uniquely his own. After the introductory chapter, the first substantive chapter of this book is chapter two, entitled "The Lesson of the Azande." Full of illustrative language, this chapter, of all the chapters in the book, explores the most voodoo-like techniques.<sup>1</sup> This chapter discusses how a culture's rituals substantially influence the local community's legal dispute system. Yet, on the other hand, the dispute resolution system is not necessary to maintaining the metaphysical beliefs of a local culture if the beliefs are widespread and

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<sup>1</sup> "Witchcraft, oracles and magic form an intellectually coherent system. Each explains and proves the others. Death is proof of witchcraft. It is avenged by magic. The achievement of vengeance magic is proved by the poison oracle. The accuracy of the poison oracle is determined by the king's oracle, which is above suspicion." See OSCAR G. CHASE, *LAW, CULTURE, AND RITUAL: DISPUTING SYSTEMS IN THE CROSS-CULTURAL CONTEXT* 25 (2005).

deeply rooted enough in that culture. To illustrate these points, the author makes a convincing argument, discussing the Azande people at length and how their culture relied on the very simplistic technique of determining guilt or innocence based on whether a poison-fed baby chick either lived or died. In essence, the author states that each time the oracle announced a decision of guilt or innocence based on such practice, and the society accepted and relied upon such decision, not only was the practice validated—but so was the entire ritualistic culture of the Azande society.

From here the author discusses “‘Modern’ Dispute-Ways,” focusing on the minority of disputes that are not settled, mediated, or arbitrated, but that are actually litigated until a formal judgment is rendered by the court. The author suggests that, like the impartiality and consistency of the *benge* trial of the Azandes, the modern court system provides a culturally valid system that assures society is likewise subject to the court’s rule of impartiality and consistency in outcomes. According to the author, impartiality is accomplished in several ways, one of which is the appointment of a judge by a higher power. In the case of the Azande, the higher-appointing power was the king. Here, it is either the populous that elected the judge or the governmental branch responsible for the judge’s appointment. The author asserts that a society’s aggregate respect for a higher power as well as for the election process enables a judge appointed by such means to maintain an appearance of neutrality in the eyes of the populous. The more this process of appointment by a higher power is repeated, the more the modern legal system is legitimized. It is through these examples, that the author successfully illustrates his central premise that the modern legal system has legitimization because of various repetitive, ceremonial, and ritual processes. In turn, the metaphysics of the society producing the modern legal system is maintained.

“American ‘Exceptionalism’ in Civil Litigation” is the title of the fourth chapter. Here, the author seeks to propose, that “variations in disputing practices even *among* modern states are traceable to underlying cultural differences.” To accomplish this difficult task, the author compares the United States judicial system at length to the judicial systems of Germany, Italy, and England, as well as briefly to that of China in a subchapter titled, “American Adjudication in Comparative Context.” In so doing, the author notes that there are substantial differences between our Asian, European, and English counterparts. For instance, the American judge may be seen as a weaker judge when compared to his or her foreign counterparts for, unlike the majority of the world, the American jury system puts laypeople—individuals with no special legal training—above the American judge in order to provide a procedural safeguard. Yet, conversely, the American judge can be viewed as having more power than his or her foreign counterpart in

that a judge in the American legal system often has the power to create binding legal precedent, while a judge in a civil law country, at least in theory, is permitted only to consider laws as set forth by his or her respective legislature. Examples such as these as well as others with empirical support allow the author to successfully link procedural values and culture in this chapter of his work.

Moving up the pyramid, the author's fifth chapter, titled "The Discretionary Power of the Judge in Cultural Context," examines judicial discretion through a macro lens. Almost immediately the author notes that judicial discretion around the world has recently gained significant wide-based support. Consequently, court systems around the globe are now affording more discretion to judges than was previously allowed. In this chapter, the author asserts that the vastness of such a change is a clear marker of broad change in the cross-cultural context. Here, the author rejects the majority viewpoint that the law is the "exclusive preserve of the professional elite." Instead, he asserts that even the most technical and sophisticated legal documents are influenced by the symbolic and social worlds in which the drafting lawyer is immersed. While I agree with the author that the social world influences the drafting lawyer, I would be interested to see a statistical study that shows the regression between exclusivity and societal influence. Until then, I agree with the author's assertion that the recent increase of judicial discretion in the legal system is "profoundly influenced, though not solely determined by forces external to the [legal] profession."

The sixth chapter of this book is likely the most appropriate and suitable for readers of this journal, titled "The Rise of ADR in Cultural Context." In this chapter, the author provides an insightful look into American culture and how cultural changes in America have spawned an increase in the country's alternative dispute mechanisms. Although the chapter begins with a brief history lesson, the lesson is too cursory to be of any real value. Beyond this brief history lesson, however, the subsequent subchapters discuss significantly more substance, proving to be of far more value to the reader. The titles of the subchapters are:

- *Litigation Growth Does Not Account for the Trend*
- *The 'Hyperlexis Critique'*
- *Counterculturalism and ADR*
- *Privatization*
- *The Loss of Certainty'*

These subchapters in the aggregate either dismiss or bring forth several culture-based reasons why alternative dispute mechanisms have grown in popularity since the last quarter of the twentieth century. Although seemingly accurate, the author's discussion of each of the subtopics takes place in a

mere two to three pages, a rather short analysis considering the complexity of the underlying hypotheses set forth by the author. Still, the author is successful in making his points, offering several valid culture-based reasons why ADR has substantially grown in the last quarter of the twentieth century. Therefore, for those interested in ADR's foundation, this chapter provides a useful overview of this dispute process's culturally influenced origins.

The seventh chapter, appropriately titled, "The Role of Ritual," discusses courtroom symbolism and ritual. The central premise of this chapter is that the widely dispersed symbolic and repetitive ritual practices help lead to the solemnity of the court as well as acceptance of the court's ultimate decision. For instance, there are several verbal ritualistic behaviors that occur inside the courthouse. First, one shows respect for a judge by standing when a judge enters the courtroom. Moreover, a lawyer approaches a judge's bench only after first obtaining the judge's permission. Similarly, an attorney continues to address the judge in traditional "knight-like" fashion as "Your Honor." Finally, the phrase, "May it please the court," precedes the start of each oral appellate appeal. It is these very types of repetitive practices, whether or not they serve any initial instrumental purposes, which ultimately take on a symbolic and ritualistic quality of their own. Because of its underlying premise, this chapter is essential for any scholar or practitioner wishing to further explore alternative dispute resolution mechanisms in that it discusses the necessity of symbolism and ritual in the dispute process, something that ADR has always lacked.

The last substantive chapter titled "How Disputing Influences Culture" wraps up the author's premise that the modern dispute system is reflective of the values, authorities, and metaphysical beliefs of the cultures that produce them. In order to accomplish this, the author provides numerous examples in order to prove his point. It seems by laying the foundation in a pyramid form across nine chapters and by successfully piggybacking onto the work product of numerous other scholars, the author successfully builds upon and interweaves the work product of others into something uniquely his own.

### III. THE WORK'S OVERSIGHTS IN BRIEF

One of the work's greatest accomplishments may actually be its greatest weakness as well. If anything, the author attempts to bring in too many viewpoints from other scholar's work. In fact, according to my count, the author asserts the central premise from two hundred eight different articles and journals in less than one hundred forty pages of text, many of which are cited numerous times. The majority of the works cited by the author are groundbreaking scholarly insights in the context of anthropology and the law.

The trouble, however, arises because the author at times seems to prefer citing as many sources as possible in order to give his work authority instead of thoroughly laying down thoughtful, fundamental underlying principles. As a result, the book is often choppy. Some of the premises asserted seem to not have any clear support. Part of this problem could have been substantially alleviated if the author had provided more foundation for each of the central premises asserted. Presumably for the sake of brevity, however, the author chose not to do so.

Because of the sheer frequency of citations to scholars by the author, it is also difficult to properly discern which thoughts are uniquely the author's and which thoughts are borrowed from another distinguished scholar. For instance, in less than ten lines on one particular page, the author compares the work of David Dudley Field, Charles Clark, Wolf Heydebrand, and Carrol Seron.<sup>2</sup> When the author proceeds to summarize each of their works and assert his own viewpoint, it becomes unclear if the book's author is adopting one of his own or a substantial portion from anyone of the aforementioned individuals.

#### IV. CONCLUSION

It is clear from the very first page of this book and throughout its entirety that the author has kept himself abreast of modern thought pertaining to this subject matter. However, because each of the cited works are merely cited in a cursory fashion, this article can be best summarized as an article that accomplishes great breadth but does so with little depth. Thus, if one can tolerate the piecemeal nature of the book, one will actually be more enlightened by reading it because of the substantial number of central premises discussed by this work.

Lastly, for those interested in further delving into the alternative dispute resolution processes, this book's significant exploration of understanding the dispute resolution system in the cross-cultural context is definitely worth learning. If one does not know the author's central premise and tries to create or modify an alternative dispute system, the individual may be making a grave mistake, for culture and the legal system are reflective of one another.

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<sup>2</sup> See CHASE, *supra* note 1, at 83.