

BOOK REVIEW

Elisabeth Claverie and Pierre Lamaison, L'Impossible Mariage, Violence et Parenté en Gévaudan, 17e, 18e et 19e Siècles. Paris: Hachette, 1982.

Yves Dezalay

It is remarkable that this important book has attracted so little attention in the field of socio-anthropological research on law. At first sight, the arguments it presents may seem paradoxical to those sociologists of law who regularly denounce the legal centralism of dogmatic lawyers, who, obsessed with text-book law, ignore the determining factors and social effects of the legal issues that they imagine they can resolve autonomously. The authors likewise undermine the work of generations of sociologists of law who have attempted to demonstrate that impoverished litigants lack practical legal knowledge and, if so unfortunate as to get involved with the law, are incapable of defending themselves and inevitably get crushed by the blind machinery of justice.

From the very first pages such representations are opposed. The villagers described, far from deploring the blindness of justice, would be quite happy if it were even more so because only under such conditions can they "employ it to transpose the settling of scores and maintain their system of private vengeance" (p.22). It is the abstraction, the distanciation, the bracketing of social context achieved by 'respecting' the letter of the law which makes procedure and the legal process "a weapon perfectly integrated into the group's ensemble of internal relationships", "the privileged auxiliary of local dispute, an ideal method of destroying a rival, of bringing an enemy to ruin and shame" (p.22). e

These are not theoretical assertions by authors bent on using every means available to demonstrate the natural, necessary, autonomous character of the legal order. They are the conclusions of two ethnologists who have systematically and in great detail examined the archives of a poor rural district in the south of France covering three centuries (the 17th, 18th and 19th), in order to study family disputes. Their conclusions cease to be paradoxical however from the moment that it is suggested - and this is their central hypothesis - that the Gevaudan peasant, far from being a stranger to the state legal system, is in fact

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extremely familiar with it. "In legal matters, even though there are few who can read and write, the peasants are astute, shrewd and determined. In this field there are none to equal them and one would be foolish to imagine that the notaries think for them, they only advise them" (p.71). These notaries - or village 'lawyers' as they were familiarly called then - are certainly not marginal to the intricate web of mutual obligation and client-relationships which constituted rural society. The ambition of every successful, well established peasant is to have a son study law (p.129) in order not only to be able better to manoeuvre in the field of law, but, far more importantly, to obtain a position of strength in the field of alliances that he depends upon, through the various services his son's position will allow him to render - drawing up of contracts, money lending, etc. As a result of generalized and repeated investment in law, the Lozère peasant managed to circumvent with great efficiency the Napoleonic rule imposing the division of an inheritance into equal parts for all children: this was done by respecting only the letter but not the spirit of a norm contrary to the fundamental rule of their own social system, which insisted upon the continuity of family property from generation to generation.

These village communities managed, at least for a time, to subvert penal justice. Denunciations and perjury are "the most radical and usual methods employed to attack a neighbour. ... A 'strong' family boasts of having dishonored quite a few rival 'houses' with no damage whatsoever to itself...."[1] A law suit is "the best means of eliminating rivals, enemies, of bringing upon them dishonor and ruin; it is also a means of proving one's force, one's standing and therefore one's desirability as an ally on the matrimonial market. Through the expedient of legal processes, one thus proves one's rank and can marry optimally." (p. 262-263)

When challenged on the field of law - which is a field of honor par excellence - one is obliged to respond by raising the stakes "under pain of publicly losing face ... and opening a symbolic breach in the defensive image that [the family] is obliged to portray of itself in order to inspire respect" (p.261). It is imperative never to accept an attack without riposting, although this counter-attack will, in its turn, be avenged. "In this destitute society, those considered weak are exposed to every form of exaction." (p.262)

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1. Ruffini (1978) similarly notes that the Sardinian shepherd who manages to transgress norms without being punished is highly respected.

Legal violence is integrated into the social game and requires alliance mobilization. On the basis of his clan membership everyone is obliged to testify - if necessary, to commit perjury. At the same time one can go too far and overstretch one's luck: the loser is ruined and in the worst case is deported to Cayenne, a victim of a combined system of penal machinery and escalatory social violence that eliminates him. But he is not alone in his perdition: his entire family will have to shoulder the shame of defeat over the following generations and accept the many economic and symbolic consequences.

If the legal field is a privileged battle-ground for proving rank and mustering the alliances that insure impunity, it is also filled with risks and imponderables: not only judges but also the police dislike being manipulated and the importance of the stakes arouse covetousness, grossly unfair play and many forms of treachery. Because of these factors a variety of forms of private settlement in the shadow of the courts arise. These help minimize risks by reorienting the management of disputes towards the interior of the local social field and reducing the intensity of confrontation. Settlements are by no means peace but are more like a sort of armistice. The plea for clemency from the adversary family is a humiliating step for the person who takes it, a public proclamation of weakness; however, there is always the possibility of revenge later on. When thus negotiating in the shadowy margins of justice one remains in the field of symbolic confrontation but the stakes are more manageable by the social group than when confrontation takes place within the boundaries of the legal system which, true to its logic, is relatively blind: hence its value, but also its risks.

This analysis makes fascinating reading and in particular one can recommend the authors' concrete family histories to researchers interested by the social dimensions of legal phenomena. This of course does not mean to say that the conclusions drawn can be transposed as such into the modern debate. The situation was in Gévaudan itself unstable and the dynamics of the legal game described contributed towards weakening the positions of the families engaged in the field of law and towards a general loss of autonomy by the village group as a whole as it is faced with the onrush of centralized power. This was apparently already perceptible towards the end of the 19th century.

The authors can only be congratulated for their modesty and the rigor of their empirical work. Their conclusions are, however, perhaps more general than they suggest. In my own research I have discovered that Norman peasants nicknamed a hearing before the

'Juge de Paix' a 'High Mass' and that families, having poured over the little red book (the Civil Code) during their long winter evenings were able to stand before the judge armed to their very teeth with impeccable legal argument.[2]

Readers interested in the question of the legal competence of peasants should consider the work of rural economists who defend the thesis that the peasant 'petit propriétaire marchand' (small mercantile landowner) is a central pivot of the law game defined by the Napoleonic code (Nallet and Servolin, 1981). It is perhaps not absurd to imagine that this description of interaction between a relatively isolated social group and the legal order is still valid today, at least in the rural world, and perhaps even in other social fields. Having myself studied the management of disciplinary matters in private enterprise I am inclined to draw conclusions similar to those of Claverie and Lamaison (Dezalay, 1986b). But it is not so much this particular point - which has been developed more generally by authors such as Moore, Eisenberg, Galanter, Macaulay, Griffiths - that we would like to discuss here. The phenomena Claverie and Lamaison describe raise once again the epistemological problem of binary oppositions' - private order' vs. 'legal order'; 'fact' vs. 'law'; 'laws' vs. 'customs' - which, as soon as one works with legal documents, are impossible to escape, whether one is an anthropologist or a sociologist. Are the 'facts', 'customs', the 'private order' - whatever concept one chooses - that one identifies, not simply conceptions contrived by and for the needs of legal representation? Do they have a personal reality? Are they ex-post reconstructions? Questions that to this day have not been answered - will they ever be? - but which heavily mortgage any research pretending to analyze interaction - however dialectical - between the world of 'scribes' and lawmakers and the other world of social relationships, rural rationality, etc. It is appropriate to note here the merits of a young anthropologist, L. Assier-Andrieu who, when researching the durability of the 'Stratae Law' tackled these rather formidable epistemological questions in order to theorize on relationships between village communities and the legality of 'puissances' (powers). Here again, we cannot but recommend his work to readers who would like to delve more deeply into these questions (Assier-Andrieu, 1986).

I should like to conclude, more modestly, by simply calling attention to the fact that the work of these ethnologists invites us to question accepted viewpoints, perhaps because they them-

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2. Information gathered during research on "the peasant and justice" (le paysan et la justice).

selves stand outside the well-known doctrinal quarrels. The sociological approach to law escapes as little as the dogmatic approach from the preoccupations that weigh so heavily on the production of learned legal discourse (Bancaud and Dezalay, 1984). But an attempt to dissociate oneself from traditional doctrinal analysis by taking an opposite course could lead to a certain blindness to fact. Thus theorization on demands for law and justice inevitably faces the dilemma that these are at the same time a natural necessity (one needs justice and rights in the same way that one needs bread), but also a mystification organized by professionals in the service of the dominant class.

These authors managed to escape from this dilemma by considering law and justice simply as useful resources in symbolic confrontation where personal and private disputes are officialized (Boltanski 1984), i.e. carried above the level of complex, confused interaction within domestic order, where nothing is ever conclusively played out, onto the public scene where the winner receives the symbolic benefits gained through legal legitimacy and the loser is doomed to general disapprobation. Thus, a social group that chooses to officialize a dispute by inviting professionals to manage it for them not only runs direct risks but also suffers a more diffuse loss of autonomy through relative dispossession. For this reason intermediary solutions are advantageous; settlements 'between ourselves' in the shadow of justice minimize costs and risks, but benefit all the same from the symbolic capital accumulated and controlled by law-professionals. This is a delicate game that the guardians of legal order cannot allow to develop too widely for it weakens the symbolic capital that 'the law' represents by the very fact of its inviolability. At the same time, they are obliged to tolerate these practices to a certain extent in order to gain access to the profitable market of social disputes.

These obscure, shadowy arrangements, characterized by secrecy, quasi-legality and compromise, are at the junction of private and public demands on legal order. These professionals of justice manage the legal order's contradictions between law's formal generality and its implication in private, particular, conflictual situations (Dezalay, 1985). This is notably accomplished by a dialectical division of labor between on the one hand the guardians of orthodoxy, who insist on the order of the law, on the respect for texts and for the legal rationality that the autonomy of the professional field is founded upon; and on the other hand reformers, ever ready to criticize the dogmatism of their elders by pointing to the demands of the social context, thereby contributing towards the necessary updating of dogma,

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without which the field of professional practice would soon be disqualified as a field of power.

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