

AN INQUISITION TRIAL?

Ietswaart vs. French legal anthropology

Norbert Rouland

It is always with keen interest that an author sees his work become the object of an international debate. I would therefore like to express my gratitude to Heleen Ietswaart for giving rise to this event through her recently published review of my *Anthropologie Juridique*.¹ To date (end 1990), some eleven other reviews have been published,² written by authors who belong to different cultures and scientific traditions, some of whom, like Dean J. Carbonnier, are universally acknowledged authorities. That all these other reviews have been very positive is gratifying, but unanimity is always a cause for concern. Ietswaart's review marks a break with this consensus, and thus brings me relief. She gives a critical analysis of the situation of the anthropology of law in France, as well as of my book, which she judges to be the typical product of a French intellectual. Of course, I do not agree with all of her ideas, as we shall see. Indeed, this is the essence of any debate. However, I sincerely regret that the form she has chosen severely hinders the credibility of her critique and undermines its potentially refreshing nature.

1 Ietswaart published her review in two journals (see Ietswaart 1989a and b), the second version containing only minor modifications. Her review was criticized by E. Le Roy (1990). She replied to Le Roy (Ietswaart 1990). Other critical reactions to Ietswaart's review will be published shortly (see, for example, Arnaud 1990, Bissonnette 1990).

2 See the references at the end of this article. Other reviews will shortly be published, as the book is to be translated into English (Stanford University Press and Athlone) and Italian (Giuffrè, Milan).

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A scientific review should not turn into an Inquisition trial. Although I do not know Ietswaart personally, I am sure she is a very charming person and in no way deserves the reputation as the Torquemada of the sociology of law that she is making for herself. Consequently I intend to respond courteously to her commentary on French anthropology of law and my own writings. It will not have the charm of the Ietswaartian 'Sturm und Drang', and I ask the reader to forgive me. However, my aim is not so much to appeal to the reader as to inform him. Let us begin by describing the landscape.

Is France the Hell of the anthropology of law?

If Ietswaart's terrifying descriptions are accurate, I strongly recommend my colleagues never to set foot in France, the Kalahari of the anthropology of law, where a few benighted native authors wander, convinced that they alone have received the Revelation of Themis. M. Alliot is presented as a new worshipper of the Good Savage, and the ideas of R. Verdier (another follower of the cult) as an "attractive simplicity" (Ietswaart 1989b: 168). Only my friend E. Le Roy, president of the Laboratory of the Anthropology of Law in Paris and member, with Ietswaart, of the Governing Board of the Commission on Folk Law and Legal Pluralism, escapes criticism. That his name should never be quoted by the reviewer, when my book is largely based on his analyses, is little short of a miracle, which Le Roy himself finds surprising.³ But let us leave this dream-like world of fiction and miracles. Fortunately the real state of affairs is more attractive. Nobody, especially not myself (I even wrote it down,

³ Curiously I was not implicated by Ietswaart's criticism even in parts of her review that single out, for particular disapproval, certain passages that employ concepts (founding myths of our idea of the State, the distinction between imposed order and negotiated order completed by the accepted order/challenged order, opposition, and other refinements conveniently omitted by the reviewer for the purposes of caricature) directly attributable to me. There should be no such double standards operating in academic assessments and I take this opportunity to claim my share of excommunication (Le Roy 1990: 31).

See also Arnaud (1990): "In any case, a book which has five hundred pages cannot be condemned in a pamphlet of three hundred and fifty lines. Let us judge content properly: Heleen Ietswaart probably could have found other less offensive words which in any case do not help us to know anything about the book."

see Rouland 1988: 111-119), would dispute the fact that the anthropology of law has fewer followers in France than in North America. And yet it bears comparison with the situation in other European countries (with the exception of the Netherlands, which is far more advanced for the reasons I explained: see Rouland 1988: 109-110); on this scale, French thinkers are not particularly notable for their incompetence. It should also be noted that almost all French anthropologists of law were initially specialised in the history of law which seems to me a considerable advantage compared with other traditions. Societies of the past cannot be excluded from an anthropological approach and it is regrettable that Ietswaart should not appreciate this kind of approach, which seems to escape her. Above all, however, her opinion seems to me to be based on obsolete information (this is not a criticism, as she cannot know everything). Over the past ten years or so we have witnessed the growth of an increasingly favorable context for the critical and theoretical schools of law in France. The philosophy of law, legal epistemology and methodology, once abandoned or neglected, figure more often on university syllabi, and legal anthropologists - my colleagues and myself - are much in demand. In two years two chairs in legal anthropology have been created and works of legal anthropology are being published in the well-known university editions. Finally, the CNRS (National Center for Scientific Research) itself has become aware of the importance of law for the humanities.⁴ Many rays of light, surely, which are growing to illuminate our windows - French rays of light. It is a shame that Ietswaart's readers should get exactly the opposite impression from her review. It is even more unfortunate that the latter was published in a journal whose underlying principle is one of pluralism: as with virtue, it is easier to speak of than to practise. For the meaning of the reviewer's indictment is quite clear: the ideas of French legal anthropologists are so mediocre that it is perfectly unnecessary to study them. Either French authors have a monopoly on humbug,⁵ or Ietswaart is

4 See *Les sciences du droit* (CNRS 1990), which opens with articles dealing with the anthropology of law.

5 Ietswaart is tormented by "the splendid isolation of France in the social sciences" (Ietswaart 1989b: 163). Authors such as LéviStrauss, Bourdieu, Boudon, Baudrillard, Derrida, etc., would no doubt be surprised to hear about it. Fortunately, A.J. Arnaud (1990) feels he can reassure her: "The College of France as well as the Ecole des Hautes Etudes en Sciences Sociales in Paris, Lyons, Marseilles and Toulouse, to name but a few, are full of people who are renowned on the international scene."

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attempting to develop a monistic theory of pluralism, which should be an arduous task. I regret to have to say that I feel I must agree with E. Le Roy when he writes that:

... insightful criticisms invite further discussion whereas ex cathedra condemnations only reinforce the negative sentiment of marginalization experienced by French anthropologists of law, a sentiment Ietswaart completely disregards, she is free to do so, but which nevertheless produces intellectual narrowness, closures and rigid intolerance. (1990: 32)

The image Ietswaart presents to us of French anthropology of law is indeed a very gloomy one. Unfortunately, she read my book with her dark glasses on!

What is my *ANTHROPOLOGIE JURIDIQUE*?

Every author is well aware that he is not necessarily ideally placed to judge his own book. Long ago Chopin noted bitterly that Liszt played his études better than he could. When I first read the review, I was so surprised to learn about a great many things in the book that I had not thought about, that I at first believed I had found my Liszt. However, on second thoughts, I think it is Czerny. We shall just have to open up the keyboard and let the right note be heard. I am afraid that it will only be an echo, as I sincerely regret that the editors of *JLP* have not seen fit to publish the review and my reply to it in one issue.

The time gap obviously inflicts a considerable handicap on a reaction. It is an old device but it still works. Let us remind ourselves of what C. Wright Mills wrote:

It is not conventional for the author of a book to answer criticisms of it by professional reviewers; in fact, it is the policy of some learned journals to discourage it, or not to allow it. But even if the review is answered, it does not really matter too much. Everyone who has not only reviewed but also written books knows that one of the easiest of all intellectual tasks is to 'debunk' a book - any book - in a two or three-column review, and that it is virtually impossible to answer such a review in the same space. It would not be impossible if the book itself has been read with some care by all readers; that this cannot be assumed gives to the reviewer an overwhelming advantage. (1959: 112)

Before I deal with Ietswaart's criticisms, I would like to insist on the fact that the form and the content of any book depend very largely on the nature of the work and on the public it is primarily written for. My book is primarily a textbook and, in its French version, is initially intended for students of French law. This obviously means that future editions in foreign languages will be slightly different from the original version. Let us take as an example the author index: it is true that I listed forty-two French and twenty-six foreign authors. Now, was this because of my ethnocentric concerns? In fact, it was purely for pedagogical reasons. I believe that when students come into contact with a new subject, it helps if their attention can be captured by names they are already familiar with, and any student, whatever his or her nationality, is generally more familiar with the authors of his or her own country. This, of course, in no way means that these authors are the best! It is a shame that Ietswaart preferred to read the index rather than the lengthy descriptive bibliographies at the end of each chapter. Had she done that, she would have noticed that out of a total of five hundred and twenty-two works, two hundred and sixty-seven, that is the majority, are by authors who are not French. This alone suffices to show that my book is most certainly open to currents of thought outside France.

What went wrong?

That last point is an example of the first criticism I am led to make of the reviewer: having read too quickly, she reviews only a small part of the book, and furthermore she takes her own misinterpretations to be my mistakes. If we first look at the optical effects, we shall see that not only does Ietswaart wear dark glasses, but their lenses have a magnifying effect. Three-quarters of her review relate to 0.4% of the content of my book; that is, the problems concerning the frontiers between legal anthropology and legal sociology, for which I was horrified to learn I felt great contempt. To be frank, it seems clear that Ietswaart had some problems on this score during her stay in France and that she is projecting these on to me. She even gives us to understand as much:

This sort of discourse and its objective - the exclusion of all those who do not belong to the author's school of thought from participating in the discussion about law in society - is no longer shocking to me having worked in France for several years and thereby been thoroughly exposed to it. (1989: 165)

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I know neither Ietswaart nor her work, and I do not know who has excluded her, nor from what she has been excluded. I most sincerely regret that she has been subjected to this, but I do not wish to accept the role of surrogate victim of this negative transference.

Let us return to more objective facts. I did not write that the anthropology of law was superior to other subjects, but on the contrary that it needed them. Moreover I insisted on the convergence between anthropology and sociology that we can see taking place nowadays and stressed the resulting benefits:

... the reconciliation between these two subjects that can be observed nowadays seems to show that the old division is being transcended, and we believe that it is precisely in this direction that we must advance in the future [...] [I]f the aim of legal anthropology is to acquire knowledge of the legal mechanisms at work in all societies, it is only too aware of the size of the task to believe that it can accomplish it alone. (Rouland 1988: 157)⁶

I could cite other examples of the quick and superficial reading that Ietswaart made of my book: she states that the two main themes of my book are: "1) legal pluralism is the definitive theory of legal anthropology, and 2) lawyers [les juristes] are the major enemy of the anthropology of law" (Ietswaart, 1989b: 161). If we check up on her claims, we see that I deal with legal pluralism on pages 74-96, 102-107; and with the attitude of jurists on pages 58-62, 75-80, 96-98, 151-155, which makes in all a total of forty-two pages, out of four hundred and ninety-six, or 8.5% of the book. We are bound to reach the following conclusion: at best 90% of the book was not studied by the reviewer, a fact which does not figure anywhere in her review,

6 It nonetheless remains the case that the old division between ethnology and sociology that developed in the evolutionist atmosphere of the nineteenth century still produces certain effects, whether we like it or not. The work of the ethnologist and that of the sociologist cannot be identical nowadays and I recommend to the reader Kilani (1989: 85-102) for an excellent account of the relationship between the two. As Chiba writes:

Still the prevailing sociology of law tends to take Western law for its essential objective [...] for sociology was originally created to be a science for modern society to nullify premodern society [...]. An anthropological approach is required to supplement or replace the sociological approach. (paper to be published shortly)

and we can add that both the author and the readers are thereby cheated.

If her field of vision is remarkably narrow, it nonetheless remains blurred for I have never described legal pluralism as a definitive theory, I merely said that nowadays it was the most widely-shared theory by legal anthropologists and did not predict anything for the future. Similarly, I did not write that jurists were hostile to legal anthropology, but only that the majority of them were unaware of it: there is a considerable difference. However, we do not wish to weary the reader, so we shall now direct our attention elsewhere.

Although I wish to refute Ietswaart's criticisms, I do not believe my book to be perfect. The problem is, that while it does not have the deficiencies that she claims, it has others that she did not perceive. In order to be objective I would like to mention them now.

Manuscripts tend to improve with time; when we finish a book we ought to let it mature before sending it to the editor. I completed my book two years ago and since then I have realized that I did not deal fully enough with certain aspects of legal anthropology and I should like to rectify this in future editions. I did not refer to the modern German authors enough, nor to the relationship between legal anthropology and the philosophy of law. I only mentioned the very beginnings of the debate - which is now in full flow - on the universality of the rights of man, and I regret that I did not pay more attention to an increasingly absorbing issue:⁷ the legal status of aboriginal populations and ethnic minorities. I feel that this last question should become a priority in our work, and one on which anthropologists and jurists could usefully collaborate.

I plead guilty on all these counts. Moreover I do not feel as annoyed as one might think, for Ietswaart has conceded that my book contains a number of qualities worth noting. First of all she admits that there are few errors (1989a: 38) and she even goes so far as to write that

... Rouland has looked abroad and has integrated a good part of the literature in English and German. This effort, helped by a stay of considerable length in Canada to study the Inuit, is remarkable and courageous, in the French intellectual context, where normally not much credit is given for such an outreach. (1989b: 162)

7 I have already rectified this in part: see Rouland 1989: 157-158; Rouland 1990: 44.

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This assessment is all the more welcome because it refutes the charge of Franco-centrism that she accuses me of elsewhere: I am grateful for the compliment. But is that all? In other words, if the reviewer did not perceive all the deficiencies of my book, perhaps the same is true for its qualities. It would be entirely inappropriate for me to list them myself, and so I shall just briefly refer to those mentioned by the authors of the reviews cited in the references at the end of this reply.

Before we continue, there is a further important point I must make. Ietswaart admits that her review "... was received very badly by Rouland and a number of his colleagues" (1990: 33), and undertakes a defense against the numerous counter-attacks her review has provoked. After a moving autobiographical account of her feelings while having to queue at a gas station in Nigeria, she gives her readers a lesson in the comparative methodology of the art of writing a review, an art-form which French scholars are unable to practice, in her view. Of course this is quite in keeping with her previous remarks directed against them. However, she forgets a major point: any review, whether it is written by an English-speaker, a French person or an Asian, must be utterly free from lies. Now, what does Ietswaart do? She writes: "Rouland got his reviews in France all right." (1990: 34) The reader will think: 'French authors only write falsely accommodating reviews; Rouland has only had French reviews; therefore his book is no good.' Ietswaart knows perfectly well, however, that my book was also reviewed by North American authors, and that these reviews were as favorable as the French ones (the reviews were sent to her by the editor of *JLP*). The reader can judge for himself when he has read the following and Ietswaart should realize that if you give too many lessons you are bound to get a few back.

What are the book's good points?

Everyone can understand that it is impossible for an author to write in praise of his own book. I have no other choice but to quote reviews. Before doing it, I should note that the editor of *JLP* advised me not to quote French reviews. And I realize fully that if I do so, that could seem to support Ietswaart's contentions. But I decline the editor's advice, because it seems to me completely unacceptable. In one of her texts (Ietswaart 1990), Ietswaart tried to explain the French community's reaction to her review as the effect of culture shock: in the English and American traditions, reviewers write exactly

what they think about a book; in the French tradition, reviewers are only supposed to express themselves in rather ritual terms of praise (1990: 34). Ietswaart's suggestion is of course a caricature. Everyone knows that as far as reviews are concerned the Anglo-American tradition is more critical than the French one. I think that each tradition is defensible: there are only bad and good ways to follow it. I have no problem with the Anglo-American reviewer who bluntly writes that he does not like a book. But I cannot accept the tone and the style of Ietswaart: it is insulting for French scholars and for myself, and without any necessity (see Arnaud, *supra* n. 3). I also have no problem with the French reviewer who chooses only to write about a book which he likes. It is ridiculous to think, like Ietswaart, that if a French reviewer writes that he likes a book, he is a liar! Strange attitude from a member of the board of a Commission devoted to the study of pluralism! Moreover, it occurs frequently that a French reviewer expresses his scepticism or his disagreement: Ietswaart needs to read French reviews more often.

The reader will therefore understand that I cannot accept the idea of not quoting French reviewers: this would be to accept Ietswaart's misunderstanding. In the following lines, the reader will find extracts from North-American and French reviews of my book (see references in the bibliography).

D. SZABO (criminologist, Montreal University):

Even in English, in which so much is published, there is no comparable work.

A. NORMANDEAU (criminologist, Montreal University):

The author's excellent bibliographical synthesis, which is of a truly international standard, contains a large number of well integrated North American, as well as European references. His frequent visits to North America, and especially to Quebec, have perhaps enabled him to master the very rich sources of those two great currents of thought. But the quality of this work can also be found in a personal, empirical and theoretical integration which is very stimulating for the reader [...]. It is entirely to the author's credit that while he enables non-specialists to have access to his intellectual mine of information, he has also created a high-quality work for those who are both studying and working in law and anthropology.

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A. GUARINO (romanist, Naples University):

[...] consiglio a tutti di leggere quest'opera, che è scritta con grande chiarezza, tratta argomenti affascinanti e non ha (o meglio non mostra) prevenzioni ideologiche. [An Italian edition of the book is due to be published in 1991 by Giuffrè, Milan.]

J. CARBONNIER (legal sociologist, University of Paris II):

Thus legal anthropology has become an autonomous discipline, and in France it was waiting for a book which would present a synthesis of the subject and here it is: it is a 'première' and a success. Mr. Norbert Rouland had everything he needed to carry out his task successfully. To his personal experience as an ethnologist he added an exhaustive knowledge of everything that has been written in his field, both in France and abroad (each chapter is followed by an extensive bibliography, which in itself is good, but it is also descriptive and analytical, which is even better). Above all, he possessed that verve without which even the best-established science can remain incommunicable [...]. A well-thought out, detailed and dispassionate work. This *Anthropologie juridique* is also a philosophy of law.

DROITS:

Before this, there was no work, whether in French or in another language, which covered the whole subject and presented a synthesis [...]. N. Rouland's book captivates its readers by the many different new approaches to law he describes, the diversity of questions he raises, and the quality of the answers he suggests [...]. All these developments are followed by bibliographical sections which are exceptionally rich. In short, it is a book that should be made available to everyone. (Anonymous 1989.) [*Droits* is one of the most highly respected French legal journals.]

J. GAUDEMET (professor of legal history, University of Paris II):

There was no pre-existing 'model' for this book. A plan had to be found. It was risky. N. Rouland dared to take the risk and he has won [...]. Thanks to him, ways have been opened, fields have been cleared, and interpretations have been put forward.

P. OURLIAC (professor of legal history, Toulouse University):

It needed a great deal of skill and courage to fit this science into the framework of a textbook. The text is accurate, lucid, and based on a very rich bibliography and it provides the French reader with a remarkable instrument [...]. Innumerable

tracks have been opened. Each chapter is followed by a series of state-of-the-art questions; the reader is invited to 'go further forward', and it is by answering these that one is best able to evaluate what one has gained from the book.

M. ARKOUN (historian, Sorbonne):

N. Rouland enriches the subject with a great many contributions from ethnology, sociology, and from an analysis of the different customs and systems of law, and in doing so he raises all the issues the anthropologist's eye can perceive.

J. GAZZANIGA (legal historian, Toulouse University):

This book is well structured and documented, and full of matter; there is an exceptionally rich bibliography [...] it is well worth making its acquaintance and its discovery is promising.

The reader will judge for himself. However, one thing is certain: a scientific review should never be the opportunity for a reviewer to settle his personal problems (we shall not be able to prevent him from doing so entirely); it must not lapse into the over-simplification and intolerance of a Stalinist trial (we can and must avoid it). Sooner or later, the victims are always rehabilitated, and the prosecutors blamed.

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