

## BOOK REVIEW

Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans*.

University of Chicago Press, 1990.

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Readers of this excellent book could imagine themselves archaeologists, uncovering and exploring layers of ideas that formed fairly quickly atop one another in the field of sociolegal studies over the past fifteen or twenty years. Those who dig deeper will soon reach the bedrock of classical socio-legal theory.

Sally Engle Merry tells us that her research began in 1980 with an investigation of disputes in American neighborhoods and their handling in mediation programs and in court. (This first study was undertaken in collaboration with Susan S. Silbey: Merry and Silbey 1984; Silbey and Merry 1986.) In subsequent years, she supplemented the initial study with related research efforts, and by the time she wrote this book she had accumulated a wealth of material based on ethnographic surveys of particular neighborhoods and on observations of numerous cases in mediation sessions, in informal hearings conducted by court clerks, and in court. Furthermore, she had interviewed many of the disputants, the clerks, judges and mediators, and the prosecutors, public defenders, and private attorneys who became involved in interpersonal disputes among working-class citizens of Massachusetts.

During the late 1970s and early 1980s western legal anthropologists increasingly turned their attention from exotic locales to the societies in which they lived. The popularity of dispute processing theory (Abel 1973; Galanter 1974; Nader and Todd 1978) led researchers to believe that a method was now available to examine formal and informal legal behavior in *any* society - and to realize that they knew less about disputing in Chicago than in Calcutta. Furthermore, at least in the American context, politicians and judges joined with some scholars in adapting certain aspects of dispute theory to create government-sponsored mediation programs for disputes within families, neighborhoods, or involving

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persons in multiplex relationships (as defined originally by Gluckman 1955). The growth of the 'Dispute Resolution Industry', soon denounced by legal anthropologists such as Laura Nader whose ideas it purported to use, meant that researchers now had a new object of study - not only disputes in court and in the community, but also those that had been diverted to the mediation programs that were growing like mushrooms throughout the country.

Merry's book has its origins in this milieu, both in the sense that she initially conceptualized her work in terms of dispute theory and in the sense that most of the cases she studied had undergone 'alternative dispute resolution' at some point in their history. As her work evolved, however, and as socio-legal theory changed during the 1980s, her theoretical framework shifted from an emphasis on dispute theory to an investigation of 'legal consciousness'. Thus, a book that may originally have been conceived as a study of dispute processing in judicial and nonjudicial settings eventually became a book about communities, about discourses, and about the ways in which working-class disputants *think* about their relationships and their conflicts. The most recent layers of this archaeological dig reflect current sociolegal trends and theories.

The organization of the book leads the reader from issues that are relatively narrow and specific to those that are more general and abstract. It begins with a description of the history of social change in New England and of the structure of the lower court system that the author studied. Merry next presents a typology of interpersonal problems - neighborhood, marital, boyfriend-girlfriend, and parent-child conflicts - and of the ways in which such problems might, in the minds of the disputants, come to be viewed as legal in nature. The author then turns to a description of specific neighborhoods and the problems that arise in them. Here we gain a further understanding of how the court is related to nonjudicial ways of handling interpersonal problems. Merry emphasizes that the court is only one of a variety of alternatives that might be selected. Others include physical violence, attacks on property, gossip, ostracism, and complaint to government agencies or officials (p. 87).

The book goes on to address the distinction between 'problems' and 'cases'. Problems are complex, multifaceted, ever-changing aspects of personal relationships that evolve and transform themselves over time. Cases are the forms that problems must take if they are to be presented to the court for resolution. They are narrowed, particularized, truncated versions of problems (or of certain aspects of problems that seem most amenable to judicial handling) and are labelled in ways that suggest a certain sort of resolution, "since, by naming the problem, one also names the way of solving it" (p. 98). Next, Merry identifies three forms of discourse that are used to discuss and debate these problems/cases: legal, moral, and therapeutic. Although she illustrates vividly

the ways in which discourse can shift and change throughout the life history of a problem, the description of legal discourse in particular could, I think, use some refinement. Merry appears to use the term 'legal discourse' to cover two quite different phenomena: the 'rights talk' that disputants sometimes use to formulate their complaint (a colloquial discourse by laypersons) and the 'legal language' used by judges and lawyers in their formal arguments or written legal texts (a technical and esoteric discourse used by legal professionals).

Merry then relates these different discourses to the four problem types, showing how the complainants present their grievances to the court clerk in terms of legal discourse, whereas the clerk and others within the court system typically try to recast the matter in terms of moral or therapeutic discourse. Interpersonal problems of working-class complainants are generally viewed as inappropriate for judicial processing - they are 'junk' or 'garbage' - and legal professionals do all they can to redirect them to other forms of resolution, such as mediation, therapy, or informal bargaining and extrajudicial settlement. Those who come into contact with the courts thus find that their 'legal consciousness' is reshaped by their experience. Initial feelings of awe and fear may change, over time, into a realization that the court will avoid decisive action or penalty in such cases and that the court can be manipulated by displays of emotion ('turning on the waterworks', in the words of one litigant) and by persistent refusal to go away until the court has paid some attention to one's claim.

Merry's *Conclusion* is particularly interesting and suggestive. She rejects the frequently expressed view that litigiousness has increased because our communities have collapsed, and alienated individuals are left with no recourse other than the courts. Instead, she argues that Americans, influenced by an ideology of individualism and egalitarianism, have sought to escape from their communities and from the rigid and stifling systems of social control associated with them. Recourse to the courts - as a rejection of traditional norms and social hierarchies - is thus closely related to the impulse that has driven Americans to seek refuge in the suburbs:

Insofar as contemporary Americans are voting with their feet rather than with their rhetoric, they are continuing to move to suburbs, to choose privacy, separation, and, for social ordering, dependence on the law rather than the intimacy of community. (p. 174)

Furthermore, Merry argues, the courts have invited individuals to bring their interpersonal problems to court through a series of doctrinal and structural changes over the years that have encouraged people to think that the courts are now an appropriate forum in which to resolve problems of parents and children,

of spouses, and of neighbors. It is all the more ironic that those who accept this invitation are met with a persistent refusal by court officials to handle such cases with a full 'legal' treatment rather than converting them into problems requiring moral or therapeutic resolutions. Merry argues that - paradoxically - individuals seek, and to some extent obtain, freedom from control within their communities by going to court but at the same time subject themselves to domination by the state. The state asserts domination by taking control of the complainant as well as his or her adversary and by dictating the way in which their problem will be characterized and resolved.

This, then, is the basic argument of the book, ending with a reflection on the domination asserted by the state over those who go to court in order to escape domination within their intimate relationships or within their neighborhoods and communities. The book contains many case studies, some related in gratifying detail. Indeed, the care with which the case studies are presented allows the reader to formulate alternative interpretations and to draw conclusions that might differ from the author's. For example, I felt that Merry's concluding emphasis on domination was somewhat misplaced. Those who used the courts seemed to me, in a great many of these cases, to be successfully manipulating the system for their own ends. True, their 'problems' were being recast in rather different terms from those they themselves might have used, and pressure for settlement was constantly applied, but many of the litigants seemed to understand precisely how the game was played and were able to gain an advantage by going to court. This is more than mere 'resistance' within a 'hegemonic' court system. This is, I would argue, an example of litigants, lawyers, and court officials engaged in a process of contestation that results in new legal and social realities and 'consciousness'. In short, I see the litigants as playing a more powerful role in helping to shape the process and to shape the ways in which the system responds to their problems.

The richness of the case descriptions permits another sort of reinterpretation. Although in one sense this book is about the role of law and 'legal consciousness', in another sense it is about mediation. Nearly all of the cases have passed through the mediation process. In some instances, this alarmed me more than it seemed to alarm the author, and I wished she had explored more extensively the implications of mediation versus adjudication and rights-enforcement in various types of cases. For example, Merry emphasizes that working-class Americans often go to court to escape violence. Yet cases involving violent domestic assaults were routinely referred to mediation on the grounds that the victim and the perpetrator were in an intimate relationship. Studies of domestic violence suggest that the best way to end these attacks is to apply penal sanctions to the attacker. By sending these cases to mediation, the courts may well have been condemning the victims to further (and increasingly

serious) injuries.

The book does not, in my view, clearly enough explain that the legal decisions of judges or other legal specialists are no less a social construction of reality than laypersons' interpretations of their interpersonal problems. There is nothing in the law that precludes judges, clerks, or prosecutors from defining domestic violence cases as serious felonies rather than 'garbage cases'. The legal decision to send such cases to mediation is influenced by a variety of social and cultural factors. At times, the book seems to assume that only one 'correct' legal conclusion is possible. Yet popular movements throughout the world on behalf of victims of domestic violence have increasingly influenced legal officials to reject traditional legal approaches and to define physical violence between intimates in the same way as violent behavior involving strangers.

On matters of emphasis and interpretation, there is always room for debate. Not all authors, however, are as careful and thorough as Dr. Merry in presenting case descriptions that permit such debate. The materials are presented with a sure hand and the analysis is calm and clear-sighted. This is not a book that will radically change our understanding of law and society nor do the interpretations of particular cases dramatically surprise us. The author does not pull rabbits out of hats; she does not send up fireworks. Rather, the book impresses the reader by conveying a sense of honesty and thoughtfulness, careful attention to detail, and a broad understanding of recent work within the field of socio-legal research. This is a book that helps to define a field of study and to remind us of where we have been as well as to suggest where we might next choose to go.

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