

BOOK REVIEW

ANTHROPOLOGY AND LAW: ‘BALANCED RECIPROCITY’ IN DISEQUILIBRIUM?

James M. Donovan and H. Edwin Anderson III, *Anthropology & Law*. Oxford and New York: Berghahn Books. 2003. ISBN 1-57181-423-X . 229 pp. £40 or US\$59.95.

Jogchum Vrielink

Berghahn Books’ new ‘*Anthropology &...*’-series, edited by William Beeman and David I. Kertzer, aims to examine and map the intersections of anthropology and other academic fields and disciplines. Each book in the series will focus on the relationship to one particular discipline, considering both directions of influence. The books deal both with “how ideas and approaches from anthropology have affected the non-anthropological field” as well as addressing the ways in which “work in that field is influencing the latest work in anthropology.”¹ Most books in the series will be co-authored by an anthropologist and a scholar from the other discipline that is being considered.

This project appears to be a timely endeavor. The present period is witnessing an unprecedented interest in anthropology and its research methods by many other social sciences, while the discipline itself is questioning them and looking for alternatives. Dialogue with ‘representatives’ from other disciplines would seem invaluable at this point, facilitating cross-fertilization and new insights and identifying new directions for interdisciplinary research.

¹ Publishers’ website: <http://www.berghahnbooks.com>.

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Thus far the series has yielded two books, *Anthropology & Mass Communication* (Peterson 2003) and *Anthropology & Law*. The latter constitutes the topic of this review. In line with the series' aims, the book is co-authored by an anthropologist, James M. Donovan,² and a lawyer, H. Edwin Anderson, III.³

Donovan and Anderson start by positing a 'thesis of balanced reciprocity' as regards the relationship between law and anthropology. This means that "neither discipline is independent of, parasitic upon, or subordinate to, the other" (p. 2). The disciplines are treated as equals on the intellectual playing field. The authors' view is that each "both needs from and offers to the other something of critical importance" (p. 3).

At the start the authors briefly clarify what they understand by anthropology and law. Anthropology is taken to be a social science analyzing human ways of life holistically, comparatively and relativistically. Using the metaphor of streams of knowledge, the authors see anthropology as "the confluence of all other streams into one intellectual moment where they can be mutually informed, to the end that a multidimensional understanding is achieved of what it means to be what we are" (p. 7). The reader needs to note that it is *cultural* anthropology that predominates both in the examples and in the theoretical inspiration for the book. The authors stress that they do not wish to reduce the whole of anthropology to this one subfield, but that its predominance has to do merely with their area of expertise (p. 20). In defining law, the authors distinguish between on the one hand 'the Law' as a generic concept "as it is identified functionally and which is a sociocultural universal" (p. 12), and on the other hand 'the law' "as it exists as a formal cultural construct, and which is not universally present in all societies" (p. 12). They then set out to demonstrate their thesis, which informs the structure of the book itself. The two main parts of the book are 'Practical Benefits' and 'Theoretical Benefits'. Each of these parts in turn consists of two sections,

² He is working as Reference/Public Services Librarian at the University of Georgia School of Law Library. Besides having a PhD in anthropology, he also holds degrees in Greek, Latin and Philosophy.

³ He holds law degrees from Tulane Law School, the University of Bristol and the University of Cape Town. He is working as an attorney practicing with a shipping company in Leer (Germany) while also being appointed as Adjunct to the Tulane Law School.

“highlighting the benefits of that kind from one discipline to the other” (p. 4), and thus providing the book’s four central chapters.

‘The practical benefits of anthropology to law’ (Chapter 1) are situated according to the authors in the wealth of cultural facts that can serve as an empirical foundation for legal reasoning and policy. This claim is illustrated by a case study of the criminalization of polygamy. ‘The practical benefits of law to anthropology’ (Chapter 2) the authors find to be a “heightened social visibility and influence that may lead to allocating greater respect, more resources and even increased employment for anthropologists” (p. 4). Law, using its high prestige in society, can rid anthropology of “its ambiguous identity and low public esteem” thus elevating anthropology “into more prominent public view” (82). One example that is used to support this is that of anthropologists in the role of ‘expert witnesses’ in ‘culture defense’ cases.

When it comes to theoretical benefits, the authors believe anthropology can benefit law by the ability of the former to refine key concepts of the latter (Chapter 3). Two examples of this – religion and human rights – are discussed. Other ‘legal’ concepts that are suggested for anthropological clarification are: ‘race’, ‘sex’ and ‘gender’ (pp. 164-165). Finally, the theoretical benefits of law to anthropology are identified as twofold (Chapter 4). First is “the importation of developed legal concepts into anthropological thinking” (p. 197). This is illustrated briefly by the ideas of ‘right’ and ‘social contract’. Secondly, the authors find there to be “a more creative benefit” beneath this exchange of concepts. The authors believe law to offer a privileged perspective on and point of entry to culture: “cultural analysis can begin from any point, but law provides an especially fruitful key” (p. 4). The authors derive this insight “from the fact that both law and culture receive their ‘charters’ from the same existential dilemma – the confrontation with the knowledge of personal mortality” (p. 197). Due to this ‘genetic relationship’ law is seen to be more sensitive to the logic of the specific culture, “and therefore its study more conducive to the extraction of insight into the study of culture itself” (p. 197).

The book concludes with an ‘Outlook and Recommendations’, reiterating the thesis of balanced reciprocity and mapping out the path to further this vision. The authors find anthropology and law “to be reintegrating at an amazingly fast pace” (p. 204). Amongst other things, they show that anthropologists are appearing in law reviews with increasing frequency, indicating that at least we appear to be “moving in the right direction toward balanced reciprocity” (p. 205). To achieve the ideal of balanced reciprocity, however, the authors find that more is necessary. First, they believe that

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we need “a more intimate grappling with the other discipline than what suffices to establish simple collegiality” (p. 206). Disciplinary boundaries should not be jealously guarded and a true mutual engagement with each discipline’s requirements and goals should be promoted. Secondly, “each discipline must recognize what specific contribution the other is waiting for it to formulate, and direct energies on that project” (p. 207). The third and final recommendation is addressed at the level of personal development. Cooperation between practitioners of each field is seen as only “a first, if necessary step on the way to the kind of interdisciplinary perspective that balanced reciprocity will require” (p. 208). The ideal would be for individuals to become truly interdisciplinary, trained in and able to move easily between both fields: “balanced reciprocity is best achieved when the intellectual content of each discipline can interact with the other within the mind of one individual” (p. 208).

The book has many positive features. The style is highly accessible and eminently readable. Written for audiences that will often be somewhat or entirely uninformed of at least one of the two disciplines under discussion, the book steers clear of technical jargon from either discipline. This renders it highly suitable for textbook purposes, especially for introductory courses, although the book’s relatively high price could pose an obstacle in this respect. This is further strengthened by the excellent way in which the authors manage to provide many interesting illustrations and case studies to support their arguments.

Furthermore, the approach itself is innovative. Rather than subordinating legal perspectives to anthropology’s theoretical schemes, as legal anthropology often tends to do, the authors regard “law as an intellectual peer from whose input anthropology could benefit” (p. 3) as well. At times the approach is somewhat reminiscent of the way in which Ronald Dworkin relates philosophy and law, practicing each in the heart of the other as it were. (See especially: Dworkin 1993: 28-29; Dworkin 2000: 3; Dworkin 1977: Chapter 4, ‘Hard Cases’.) The authors’ argument is constructive, conducive to dialogue, and geared to facilitate progress, cooperation, mutual growth and true ‘interdisciplinarity’.

This said, there are several points of criticism to be raised with regard to the specific way in which this approach is implemented throughout the book. The authors’ theoretical approach is rather narrowly functionalistic, rationalistic and materialistic in orientation. They take Marvin Harris’ explanation of the Indian cow worship (referring to Harris 1978; see also Harris 1992) and Mary Douglas’ search for a rational basis behind the abominations of Leviticus (saying, in an interesting twist of

history, that Douglas authored *Totem and Taboo*, but recovering the correct reference in their notes as Douglas 1984) as prototypical examples of what they envision anthropology to be (p. 37).

To the extent that the authors rely on these theoretical perspectives, the same criticisms can be leveled against their argument as those against the perspectives themselves. Cultural materialism for instance (especially Harris') has been critiqued by neo-marxists as simplistic. Friedman, for instance, believes that cultural materialists rely too heavily on the one-directional infrastructure-superstructure relationship to explain cultural change, and that the relationship between the 'base' and the superstructure must be dialectically viewed (Friedman 1974). It has been criticized by idealists (e.g. symbolists and structuralists) for being one-sidedly etic (external), thereby failing to engage with the emic (internal) thoughts and behaviors of members of a particular society, wherein the key to understanding culture lies. To idealists, the etic view as propounded by cultural materialism is inherently ethnocentric, and they argue that culture itself is the main controlling factor in culture change. And finally postmodernists have attacked cultural materialism for its naïve use of and belief in the positive scientific model and methods. Some 'moderate' postmodernists would merely argue that the simple and external positive science model is unsuitable and inappropriate for the investigation of social processes since it fails to address the singularities, particularities and complexities of socio-cultural contexts. Others would go so far as to argue that science is itself an instrument used by those in power to oppress and dominate the marginalized and 'subaltern', thereby maintaining existing hegemonies. These latter, more 'radical' postmodernists would argue against the possibility of any kind of science, since it is at best useless in the study of culture, which should be undertaken in a spirit of extreme relativism and particularism.

Beside these criticisms of the perspectives used, it may be objected that the authors' exclusive reliance on a limited stream of thought within anthropology also risks rendering their analyses one-sided. Very few contemporary anthropologists would maintain that functionalist or materialist conditions are sufficient to explain societal and cultural forms: virtually all allow for a degree of idealism and postmodern influence in the search (Keesing and Strathern 1998).

Donovan and Anderson however implicitly discard other approaches on the ground that they are insufficiently compatible with the demands of law. Postmodernism is judged most harshly in this regard. In a small note, the authors are quick to conclude

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that postmodern anthropologists necessarily “deny the existence of meaningful anthropology”, and that postmodern anthropology allegedly “seeks to cripple modern science and philosophy by rejecting such premises as the existence of an objective reality, the possibility of a single truth, and the necessary characterization of science as purely political in nature” (p. 27, n. 75).⁴ Symbolist explanations are also rejected. In the context of the theoretical case study of the concept of ‘religion’ for instance, Clifford Geertz’s position is discredited, since “despite its intellectual attractiveness, his definition provides a practically useless standard by which to identify religion” (p. 142, citing Geertz 2000).

To employ terms analogous to their own, this discarding of competing modes of thinking with little or no serious discussion entails practical as well as theoretical risks. Starting with the former, this approach lends an unwarranted aura of certainty to the practical solutions that are presented to the case studies. If these solutions – alluring as they might seem to ‘the law’ for their relative straightforwardness – were to find their way into the legal system, they would be accorded the status of legal fact with far-reaching real life repercussions for legal subjects and states alike. To the authors this might seem a desirable outcome, but this view rests on their confidence that their anthropology is right, objective and true. This confidence is not likely to be shared however by many others in the field and – more importantly – it is a confidence that is *posited* rather than soundly argued and adequately substantiated. Moreover, as said the main practical benefit of law to anthropology according to authors is the greater esteem and influence that anthropology might obtain through its association with legal practice. Nowhere do the authors demonstrate an awareness of the risks that this ‘benefit’ might entail.

⁴ It may be remarked that ‘Postmodernism’ frequently instills a surprising degree of dread, causing people to fulminate against it, discrediting it by any rhetorical or irrational means available. Were all or even most postmodernist scholarship to coincide with utter nihilism and incoherence, this would be somewhat understandable. This however is simply untrue and to claim the opposite is to be intellectually dishonest. To assert this is not to proclaim myself a proponent of postmodernism (whatever that might entail), but merely to call for a more levelheaded and down-to-earth approach to the matter, analogous to Clifford Geertz’s argument for ‘anti-anti-relativism’ (Geertz 2000: 42-67).

An important *theoretical* risk is that of oversimplification. The absence of a suitably wide range of theoretical approaches stands in the way of the construction of a theoretical frame that allows for a nuanced and truly holistic understanding. More fundamental perhaps to the authors' argument, is the risk that the exclusion of important modes of anthropological thought will detract from the ideal of 'balanced reciprocity'. Allowing only those streams of thought that are directly applicable to or compatible with law to partake in the 'exchange', appears to tip the balance in 'favor' of law as the ultimate reference and measure.

In conclusion, the thesis and ideal of balanced reciprocity in the interdisciplinary study of anthropology and law is indeed promising, deserving only of approval and concurrence. As it stands however, the book itself arguably falls short of its own ideals.

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