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ROUTLEDGE STUDIES IN ANTHROPOLOGY

Truth, Intentionality and Evidence

Anthropological Approaches to Crime

Edited by
Yazid Ben Hounet and
Deborah Puccio-Den

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Truth, Intentionality and Evidence

This book provides an anthropological exploration of the ways in which crime is perceived and defined, focusing on notions of truth, intentionality and evidence. The chapters contain rich ethnographic case studies drawn from work in the Middle East, Africa, India, Mexico and Europe. A variety of instances are discussed, from court proceedings, police reports and newspapers to moments of conflict resolution and reconciliation. Through analysis of this material, the authors reflect on how perception of an act as a crime can differ and how the definition of crime may not be shared by all societies. The approach takes into consideration local standards as well as social, legal and contextual constraints.

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Foreword

In the introduction to the volume *Law at Work* (Dupret et al., 2015), four major themes are identified which help clarify the specific contributions of praxiology to the study of law. The first theme concerns the relationship between law in action and law on the books. Law as a social phenomenon cannot be reduced to legal codes (law on the books). However, it would be mistaken to ignore how formal statutes, case law and rules of evidence are integral to the practice of law. The Platonist idea that formally codified laws are mere appearances, and that the social scientist's task is to uncover the reality lying behind such appearances, confounds analysis because it fails to take into account how formal law is taken up in practice. If we were to oppose theory to practice and legal provisions to "living law", we would fail to understand fully the practical uses of law. A more adequate understanding can be gained through the close description of both professionals' and laypersons' orientations to, and reifications of, legal categories as they emerge from actual encounters in legal forums in the context of practical casework.

The second theme is related to the fact that in most sociolegal studies, scholars address the nature of law but ignore or presuppose the phenomenon of legal practice itself. The synthetic theories they deploy fail to resolve the production of legal practice. This has been called the missing what of sociolegal studies. This failure is not an omission so much as a concomitant of a pursuit of general models and assessments that aim to comprehend the fundamental significance of the law and to compare and critically examine legal institutions. As a result, they make little or no attempt to investigate the specific competencies through which lawyers collaboratively produce and coordinate legal actions in particular circumstances. It means that "sociologists tend to describe various 'social' influences on and implications of the growth and development of legal institutions while taking for granted that lawyers write briefs, present cases, interrogate witnesses, and engage in legal reasoning" (Lynch, 1993, 114). Often, social science research devotes no attention to the "here and now" dimension of activity, and by so doing it obscures the necessarily situated character of such activity. To paraphrase Michael Moerman (1974: 68), sociolegal studies would do better to describe

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and analyze how legal categories are used rather than treating them as self-evident prescriptions and proscriptions for action.

The third theme is related to the opposition between local orders of practice and "hyper-explanations". "Hyper-explanations" deploy abstract concepts that have relevance to any and all social institutions and social actions. Examples include stages of development in theories of modernity or theories of power and domination. Legal institutions and legal authority often have a central place in such explanations, but the specific practices that constitute legal activities tend to be subordinated to overarching concepts defined by one or another theory of the constitution of society. Legal work involves practical and daily activity embedded in local environments – environments that both constrain what can be achieved in particular situations and also provide resources for accomplishing such work. Travers (1997) speaks of a descriptive gap, noting that while numerous studies have characterized courtroom activities through ethnographic and related methods, very few have attended closely to the moment-to-moment conduct of such activities. A consequence of this gap is that researchers can remain insensitive to legal work as it is produced and understood by its practitioners.

The praxiological alternative – and this is the fourth theme – is to describe the means of production and reproduction, intelligibility and understanding, structure and public manifestation of legal practices and of the diverse activities linked to them. Thus, rather than positing the existence of racial, sexual, psychological or social inequalities associated with law, praxiological studies focus on seeing how activities are organized and how people orient to structures of such activities that are intelligible for the most part in an unproblematic way. The sociological hypothesis that internalized norms provoke "automatic", seemingly "spontaneous", behavior does not account for the way actors perceive and interpret the lifeworld, recognize its familiar features and normatively order their reactions to such features, nor does it explain how rules govern concrete interactions. Accordingly, social facts do not impose themselves on individuals as objective realities but instead are organized as practical achievements. Between a rule, or an instruction, or a social norm, and its implementation in action, an immense domain of contingency opens up so that such implementation is never a pure application or simple imitation of pre-established models.

If and when studying legal norms in a praxiological way, some epistemic themes become important (Dupret, 2011). These themes are those which deal with the issue of who a person is, what can be considered as a cause or an intent and what counts as evidence supporting a case. These themes have been called by Michael Lynch (1993) "epistopics", a term by which he means the epistemic resources people use in their actual courses of action to make sense of a particular situation and for the practical purposes of the particular setting in which they act. Epistopics can be specifically legal.

In criminal matters, for instance, in the civil-law system, there is no way to prosecute entities which are not characterized as "natural persons". This is how, in a case I worked on in Egypt, the judge dismissed the claim of an

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offender who pretended to have been possessed by spirits which were acting on his behalf. In criminal law again, in various legal traditions, the penalty will hugely vary according to the intention attributed to the agent of a crime, whether he or she acted voluntarily or involuntarily; thus the inquiry into the ways in which something can be qualified as intentional or not is of first importance. As for causes, one can bear in mind the famous volume authored by Herbert Hart and Tony Honoré, *Causation in the Law* (1985), which nicely shows how our concept of causation is organized around the idea of a chain relating an event and its origin.

A praxiological dealing with these epistemic themes is perspectival in the sense of observing and describing how members of a community of people engaged in specific actions orient to them in the course of their ordinary, daily, routine activities. It is not about constructing big theories concerning the concepts of the person, intention, cause, evidence and the like. It is about the re-specification of these issues in terms of practical problems that are faced, tackled and solved in more or less empirical ways by flesh-and-blood persons engaged in the accomplishment of their usual business. It means therefore addressing the "missing-what" of most studies on law and society, which are more interested in using these themes as resources for the painting of grand anthropological pictures than in addressing them in their own rights as topics in and for themselves (see Dupret, 2006).

This volume is an attempt at working out the injunction of looking at epistemic themes in legal settings as they unfold in action. The perspectives of its many contributions are not always praxiological, which leaves space for further studies. But they all contribute to a better grasp of the situated character of such epistopics, to the acknowledgement of the tremendous importance of their understanding in the concreteness of their ordinary usages and to the delineating of a grammar of words, categories and meanings used to perform actions understood as legal.

Baudouin Dupret

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