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Unpopular Cultures: The Birth of Law and Popular Culture. Steve Redhead. Manchester University Press, 1995 (Book Review)

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*Unpopular cultures:
The birth of law and popular culture*

Steve Redhead

Manchester University Press, 1995, 156 pp.

In Miami Beach, before its recent transformation into a hip world capital, there was a movie theater whose marquee proclaimed, "Supreme Court Ruled These Films Not Obscene." I wondered about the porno palace's advertising sense and about its understanding of the relations of law to society. Was it trying to reassure customers concerned about police harassment? Why didn't the marquee read "Supreme Court Ruled These Films Legal" or, better, "Supreme Court Ruled These Obscene Films Legal"? Was this porno palace trying to lure normal people — customers who consume only experiences legally validated as non-deviant?

Having read Steve Redhead's *Unpopular cultures: The birth of law and popular culture*, I have an answer: The people who ran the porno palace weren't postmodern hip. They weren't as insightful as Luther Campbell, *aka* Luke Skywalker, of Miami's *2 Live Crew*. He understood the postmodern relations of law in society: Having the record "As Nasty as U Want 2 Be" declared obscene by a court sold masses of records. Luther Campbell didn't comply with the law in search of normal customers. He manipulated law's attempts to regulate his cultural product and generated an audience which purchased that which was legally validated as deviant.

The "central thesis" (6) of *Unpopular cultures* explains Luther Campbell's insight: With the decreasing salience of other general institutions of socialization, the law is increasingly demanded to define and regulate the normal/moral (10). The law, however, is but one cultural institution. Unless supported by others, it cannot meet such demands, demands for "hyperlegality" (111). The law's regulation of cultural forms is increasingly manipulable, as cultures are internationalizing, rapidly changing both in content and technology (52) (e.g., it is much easier to close down a porno palace than record sales or sites on the worldwide web) and as deviant cultures constitute profitable markets. The unrealizable project of hyperlegality generates "the American dream where in the 1990s 'the have nots are still making something new' (the hip hop culture of the streets) while the 'haves are looking back fondly at the 1950s'." (87)

Unpopular cultures cites to works which deal with law's regulation of cultures and their products. Its bibliography is a most useful compilation of British writings, although it is a thin record of American writings. *Unpopular*

cultures tells us that exciting research is being conducted under the auspices of the Manchester Institute for Popular Culture, which its author directs.

The method of the book is a telling of academic history: The history of the intellectual study of the regulation of popular culture. With admirable self-consciousness, Redhead proposes a history of his discipline that tracks his own history. *Unpopular cultures* succeeds as a "text/book" (13) of Redhead's judgments, while these judgments are not explained in sufficient detail to allow readers to make their own judgments. The absence of a strong editorial hand unfortunately prevents the book from realizing its possibilities.

Redhead's own history, and that narrated in the book, is largely confined to the study of "unpopular", i.e. subaltern, cultures, such as football hooligans. Those who study such cultures in "postmodernity" have a fundamental problem: Representatives of these cultures are better able than academic experts to speak for the culture, rendering the academics superfluous (91).

Such academics, to avoid obsolescence, shifted from studying how law regulated (oppressed) unpopular groups to studying law as a cultural form, one way of imagining the real. They began to discuss the "aesthetics of law," its abilities to define popular desires. This move was not simply opportunistic, but reflected that academics are in culture. Subject as they are to the "aestheticization and sexualization of everyday life" (4), Redhead argues, academics must produce a discipline of the "aesthetics and erotics of law" (5). The "erotics of law" is the study of "the way(s) in which law itself becomes desired, seduced and consumed." (111)

Were Steve Redhead to visit my law school, he would see an institution devoted to the erotics of law, although it would blanch at the term. "What needs to be worked towards is law . . . as a popular cultural form," he argues (108). From a variety of perspectives, many of my colleagues at the University of Miami Law School are committed to just that project. Redhead suggests this project is devalued and "unpopular" (1, 108). In America, however, high status is accorded to the project and the commitment of the University of Miami Law School to study law in culture is rapidly raising the stature of the school.

Redhead's marginalization is, in part, a product of the differences between U.S. and British legal education (see Twining). In part, it is a result of Redhead not having heeded Laura Nader's warnings about the costs of only studying down (Nader). It is not outsiders only who desire, seduce and consume law. Lawyers do so as well and they can best learn how to practice (manipulate) law by recognizing that law is not logic, but a form of popular culture, highly amenable to change. The education students receive at my law school prepares them not only to recite the "black-letter" law, but also to create legal change on behalf of their clients (*pro bono* and fees generating).

As Nader argued, those who study only subaltern groups may produce work which has no "democratic relevance" (Nader: 293). *Unpopular cultures* is commendable for its understanding that law is in culture. But recognizing law as a cultural form is not simply the end of an academic narrative. Democratic commitments necessarily produce such a recognition.

Redhead uses "unpopular" to denote deviant, outlawed or marginalized. He never makes it relevant to democratic commitments by equating it with non-democratic. He never applies it to the law itself. Even in putatively democratic societies, like Britain or the U.S., it is the legal order which is an "unpopular culture." Law is not created by popular choice. The state, even when supposedly speaking as the voice of the people, is engaged in a project distinct from that of the pop arts.

In our current historical moment, confrontations between legal and popular cultures are salient. We live in an era of democratic transformation. This means both that legal orders must be responsive to the different voices of popular cultures and that legal orders must establish governance structures for self-defining subjects. Today, the path of the law must not follow logic (truth not determined by popular choice) but the lived experiences of democratic peoples. Today, the justifiability of law is determined by substantive legitimacy, by the law in action, in and with popular cultures. Today, "law and popular culture" means not only "the regulation of popular culture (by law)" (2) but also the regulation of law by popular culture (see Rosen 1989).

For example, I have argued (Rosen 1990) that academics should shift their focus from trying to insulate juries from popular culture (media influence, e.g.) to trying to explain how the jury system works so that jurors forsake what they know — their culture — and make decisions according to the categories of an unpopular culture — the law. The O. J. Simpson verdict, popular media has proclaimed, demonstrates the law's inability to eradicate the common sense — in this case, a justified suspicion of the police — of jurors. I teach my students to be skeptical of the idea that the unpopular culture of the law trumps popular cultures. I teach them that the O. J. verdict demonstrates both that a legal team can be worth every penny they are paid and that the job of lawyers is to teach juries (and others) who think in their own culture to use legal culture's concepts of "reasonable doubt" and "due process" for state sanctioned exercises of power. What was so startling about the jury's verdict in the Simpson case is how quickly they were able to dispense with questions of factual guilt and address the question demanded by the law: Did the State prove its case beyond a reasonable doubt?

The jury is a mechanism where democratic sentiments — popular cultures — have a sanctioned place in the law. In a democratic society, what Redhead describes, the regulation of subaltern people — the tyranny of the

majority — is always on the agenda. But so too is the democratic regulation of the law — popular cultures' regulation of the unpopular culture, the "mysterious science," of the law (Boorstin). Of course, some marginalized groups deserve marginalization (fascists, e.g.) and some popular cultures (racism, e.g.) ought not regulate the law. Had Redhead addressed issues of democracy, his concerns with aesthetics and erotics would have lost some of their ironic charm but gained in relevance. As we prove at my school, successful lawyers know that law is in society. It is a cultural form they must learn to manipulate.

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