

**THE POLITICS OF JURISPRUDENCE: A CRITICAL INTRODUCTION TO LEGAL PHILOSOPHY** by Roger Cotterrell (London and Edinburgh: Butterworths, 1989) pp. xi + 277

This book is an introduction to the main theorists and approaches of contemporary legal philosophy. There are separate chapters on the theory of common law (Savigny, Maine), the classical utilitarian reformers (Bentham, Austin), "analytical jurisprudence" (Hart, Kelsen), modern natural law (Fuller, Finnis), American "realism" (Llewellyn), and Pound and Dworkin (considered together). The work is framed by an excellent introduction to the subject and a concluding assessment of the validity of normative legal theory today.

Each theory is outlined in clear but critical terms. But Cotterrell also believes that theories should be understood in response to particular socio-political conditions, especially — in the case of legal theory — as these conditions are shaped and mediated by issues concerning the professionalization of legal practice. Hence the book proceeds at two levels. Each theory is presented on its own terms, as a distinctive approach within the philosophy of law, and then is related to a broader socio-political and professional context.

Inevitably, in a text of this kind, questions may be raised about the emphasis given to different theorists. There is no account of Raz and relatively brief discussions of Finnis and Critical Legal Studies (Unger is never mentioned), whereas Bentham, Fuller, Pound and "American realism" (especially Llewellyn) are considered in detail. Dworkin is discussed — unhelpfully — through a long account of Pound; this might belong in a learned article but it does little to explain Dworkin's ideas to those not already familiar with them. Further, the book's horizons are narrowly British-American; there is no suggestion that other jurisdictions (Canada?) might exist.

Another limitation concerns the manner in which theories are contextualized. In principle, this is an excellent (if ambitious) project; and it must fairly be said that Cotterrell is generally successful in relating theories to issues of legal professionalization. The problem is that Cotterrell wants a great deal more, but without being clear (or explicit, at least) about what this entails. Notwithstanding the title, there is almost no "politics" in the book. The chapter on Austin does a superb job of relating his legal theory to both political theory and his political context but, thereafter, "politics" is replaced by sociology — or, more precisely, by the complaint that current legal theory is insufficiently sociological. Thus normative legal theory is said to be in danger of becoming a "marginalised outpost of speculation" (at 214, 234) because it is not sociological; while Hart's work is repeatedly said to "drift" toward sociology without being serious about it! This does not show much understanding of the philosophical character of Hart's jurisprudence. On the other hand, Cotterrell is not above doing some armchair sociology of his own. In discussing natural law he suggests that legal positivism does a better job of rationalizing the legal knowledge "which is important to lawyers" (at 138). He may be right. But how does he know "what is important to lawyers"? Similarly, he asserts, as against Dworkin, that it is "profoundly unrealistic" to consider non-lawyer citizens as part of the same community of legal interpretation as judges and lawyers (at 178). Again, he might be correct; but his assertion of what counts as the

"legal community" is clearly armchair sociologizing. My point is not that such remarks are in any way improper, but that Cotterrell should not reproach others for such claims if he is going to make them himself.

Why does this matter? Cotterrell is quite right to insist that a theory of law should incorporate sociological understanding. This is an obvious point: it does not mean that legal theorists themselves should do sociology, or that there is anything wrong with normative legal theory as such. However, Cotterrell's effort to insinuate this point gets in the way to some extent of his presentation of legal theory. So far as I can see, the main reason for the chapter on American realism is that it lets Cotterrell sell the need for legal sociology; the same applies to the long account of Pound as a proto-Dworkin.

Even so, this is a good book: especially readable and well-written. Cotterrell has the gifted teacher's ability to explain theories in terms that are simple, clear and easily grasped — but while also conveying an appreciation for the power and complexity of the theory. Even abstract and technical points are straightforward in this account. The book does not presuppose any background in either philosophy or law. Although it was evidently produced as a text for basic courses in jurisprudence, it can be read by anyone with a general interest in the subject. I particularly recommend the chapters on Austin and natural law; and several others are very good indeed.

Don Carmichael  
Department of Political  
Science  
University of Alberta.