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Book Review: The Sociology of Law: A Conflict Perspective, by Charles E. Reason and Robert M. Rich

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The Sociology of Law: a Conflict Perspective. By CHARLES E. REASON and ROBERT M. RICH. Toronto: Butterworths & Co. 1978. Pp. 475. ($9.95)

This joint American-Canadian project offers itself as "a much needed alternative to current sociology of law books".[1] In place of the traditional enquiry into the functional and structural properties of law, the authors claim to have collected together twenty-one essays

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[1] P. v.

which provide a multi-national and multi-ideological perspective on the phenomenon of law in its social, economic and political context. Great attention is focused upon the subtle and intimate relationships that dominate this field of study and the products and results of such relationships: theory and practice, law and social change, social facts and social values, and legal action and social structure. The success of such a venture is mixed at best. There is a mélange of quality which runs from the balanced and penetrative observations of M.R. Goode's article to the unconvincing unorthodoxy of Piers Beirn's paper. Nonetheless, the selection is very catholic in taste and represents no obvious underlying prejudice.

The collection is divided into six sections, with each section being prefaced by a short survey of the arguments and ideas contained in the selected essays. The first part, "The Meaning of Law", concerns itself with the fruitless search for an acceptable and accurate definition of law. Malcolm M. Feeley treads familiar ground and puts forward a watered-down and unacknowledged Hartian critique of law as a species of command.[2] He does go on, however, to suggest an improved, if unremarkable economic perspective on the workings of the law. Richard Quinney and Issac D. Balbus both take a more radical line and arrive by slightly different routes at a Marxist theory of law.

The second part, "Jurisprudence and Sociology", revives the perennial debate over the affinity, if any, that exists between societal facts and societal values and whether it is logically possible to derive one from the other.[3] Donald J. Black suggests that it is essential to assemble a value-free sociology of law which can be applied to any political variety of a legal system. Nonetheless, he simultaneously maintains that values have a role to play in social science and makes the dubious assertion that to do otherwise would be "to confuse the origins and uses of a scientific statement with its validity. The fact that scientific statements are influenced by values does not make them value statements".[4] Philippe Nonet takes an entirely contrary view. He holds Black's arguments to be "loose, inconsistent and uninformed"[5] and believes that, if sociology of law is to play an effective and instructive role, it must address itself to the problems and influence of values in the workings of the legal system. He outlines the central tenets of the "Berkeley Program"[6] as a method and means by which to fulfill such a purpose.

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[2] See H.L.A. Hart, The Concept of Law (1961), pp. 18-76.

[3] This question has plagued all aspects of philosophical enquiry. For an interesting examination of its effect on legal philosophy, see P. Sinha, The Fission and Fusion of Is-Ought in Legal Philosophy (1975), 21 Vill. L. Rev. 839.

[4] P. 103. [5] P. 117.

[6] This is not meant to refer to any settled school of thought, but is meant to

In the third section, "The Sociology of Law: Competing Paradigms", there are three attempts to apply recent developments in the conflictual approach to social theory to the study of law. Robert M. Rich provides an impressive catalogue of paradigms of law extracted from the writings of the major legal theorists. William J. Chambliss and Austin T. Turk drift into drawing up an unoriginal Marxist model of law and society which casts man as a basically active, yet historically conditioned individual.

In the fourth part of the collection, "Law and Socio-political Structure", the contributors analyse, to varying degrees of sophistication and persuasiveness, the complex relationship between law and the socio-political structure in which it operates. Many colourful and interesting insights are brought out across a wide spectrum of different ideologically aligned systems as far apart as China and the United States of America. These five essays, especially those by Harold E. Pepinsky, represent the most rewarding and praiseworthy section of the book.

The penultimate part, "Law, Order and Social Change", examines the subtle uses to which law can be put to bring about social change. W.H. McConnell has written a disturbing piece on the plight of political activists, such as the Rosenbergs, Angela Davis and Alexander Solzhenitsyn, who take a stand against the prevailing political authority and outlook. He reaches the provocative conclusion that "the quality of a political culture [can] be measured by its tolerance of dissent".[7] Haywood Burns chronicles the suppression of black Americans and demonstrates how law can be used as an obstacle to reform. On a similar line, Charles E. Reasons tries to show the way in which the traditional colonial approach to native problems continues to thwart the drive towards full recognition of native culture and rights. James F. Petras, alighting upon the predicament of Chile, explains how law was manipulated by the economically powerful and resulted in the collapse of the democratic government. Finally, M.R. Goode, in an article first published in this *Review*,[8] makes a most revealing investigation into the Law Reform Commission of Canada and seeks to unearth the crucial, yet unavowed social policies that underlie its work. He astutely points out that, by accepting the existing value of present-day Canadian society, it compromises the very reason for its existence:

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convey a mood and a posture taken up by a number of academics who were at one time colleagues at Berkeley; see J. Skolnick, The Sociology of Law in America: Overview and Trends (1965), 12 Soc. Prob. 4; J. Carlin and P. Nonet, The Legal Profession (1908), 9 Encyclopedia of Social Sciences 66; P. Selznick, Sociology and Natural Law (1961), 6 Nat. L. Forum 84.

[7] P. 348.

[8] (1976), 54 Can. Bar Rev. 653.

> Behind [their observations] lies a wealth of undisclosed and undiscussed assumptions about the nature of Canadian society. . . . The failure to question must result in severe doubts being cast upon the worth of the philosophical approach embraced by the Commission, and the recommendations which flow from that approach. Indeed, failure to question and failure to recognize the true bases of current political criminological debate, and the consequent adoption of the existing social environment as a whole, results in the Commission accepting the status quo in substance of the social order and all that it implies.[9]

The final section, "The Sociology of Law and Social Praxis", addresses an issue of increasing contemporary significance for the sociologist, namely, that of the real and the very fertile reciprocation of theory and practice. In a perspicacious, if jargon-laden essay, threaded together by its support for Weber's action theory, Clive Grace and Philip Wilkinson make plain the need for a new approach and methodology in the sociology of law. Building on the foundational work of C. Wright Mills,[10] Barry Krisberg attempts to meet such a request and formulates a five-point plan of action in developing such an alternative methodology. He makes the valid conclusion that the sociologist of law must not be content with the mere written dissemination of his ideas; "we each have special constituencies which command our strongest dictated commitment. The choice of the format or the expression of our ideas ought to be dictated by the relationship of those ideas to practice".[11] In a contribution of doubtful quality, Piers Beirne strikes a discordant note by claiming that the central tenets of Marxism, especially its utilisation of empirical research as a tool for social change, are incompatible with a true sociology of law.

Despite certain pretensions to the contrary, this sociological perspective on law is likely to remain as alien to the lawyer as any other. Often speaking in the obscure and foreign tongue of the academic sociologist, this book is most certainly published with the sociologist as opposed to the lawyer in mind. Nevertheless, it does draw together a representative selection of work in this field and contains a number of useful bibliographies. Furthermore, the lawyer who has the enthusiasm and patience to wend his way through this sizeable and dense publication will be rewarded with some revealing and powerful insights into the complex social framework and environment in which law operates and, more particularly, into the workings and concerns of the sociologist's mind.

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[9] Pp. 392-393.

[10] He maintained that, for sociology to progress and step beyond the complacency of traditional sociology, it was vital to develop a "humanistic" approach; that is, to demonstrate and explore the link between men at large and the powerful historical forces which created existing social conditions. History and man are the central strands of any social enquiry: see The Sociological Imagination (1959).

[11] P. 467.

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