

Book Notes

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BOOK NOTES

TORT LAW AND ECONOMIC INTERESTS

BY PETER CANE

(Oxford: Clarendon Press, 1991) 530 pages

The book studies how tort law protects financial interests in money, property, and contract by examining various types of economic interests. Discussing the many roles of tort law in allocating risk by deterring defendants and compensating plaintiffs, it considers practical questions, such as the liability of a public authority and methods of dispute resolution. The considerable analysis of tort theory traces many changes that have occurred in the law, particularly the relationship between tort and contract, and the recovery of economic loss. Consequently, the book highlights some of the grey areas between tort, contract, property, and restitution. Other means of protecting economic interests through regulation, contract, or insurance are also treated. It is a comprehensive and thorough analysis of a difficult and taxing area of law.

LAW AND THE ORDER OF CULTURE

BY ROBERT POST

(Berkeley: University of California Press, 1990) 202 pages

Over the past decade, the broader cultural dimension of law has been more fully recognized. As is academe's wont, the scurry to avail legal scholarship of the revealing insights of traditionally ignored disciplines has resulted in a cornucopia (or plethora — depending on your point of view) of literature on law's other cultural life. In this exciting collection of essays, Robert Post of Berkeley Law School has brought together seven pieces that provide a sampling of the interdisciplinary explorations around the cultural construction of legal meaning and practices. A rich and varied assortment of insights, this volume recommends itself both as a useful primer for those who seek an informed and balanced introduction to the hermeneutical enterprise and as a refreshing

reminder to those more familiar with the field of its continuing fertility.

WHAT'S WRONG WITH RIGHTS?
PROBLEMS FOR FEMINIST POLITICS OF LAW

BY ELIZABETH F. KINGDOM

(Edinburgh: Edinburgh University Press, 1990) 172 pages

Rights-talk is difficult to avoid. Yet its seductiveness belies its riskiness for those committed to changing the status quo. In this reworked collection of essays, Elizabeth Kingdom offers a postmodern account of the opportunities and dangers that face feminists in developing a viable critique of law and an accompanying strategy for change. She traverses well the worlds of practice and theory. Eschewing ideological dogma and conservative pragmatism, she presents a theory of feminist practices that attempts to deploy rights-talk in selective and contingent ways. By way of illustration and reinforcement, Kingdom grapples with the specific issues of abortion, sterilization, cohabitation, and childbirth. This is a sophisticated and sensitive book whose jurisprudential common sense on rights-talk has value for a whole range of issues about social injustice and its confrontation. It would be a pity and a mistake if this book were only to be read by those interested in feminist approaches to law.

THE ALCHEMY OF RACE AND RIGHTS:
THE DIARY OF A LAW PROFESSOR

BY PATRICIA A. WILLIAMS

(Boston: Harvard University Press, 1991) 263 pages

Few books by legal academics can be described as "a cracking good read." But Patricia Williams's marvellous book is a towering exception. In an individual style of elegant fluency, she cuts across the familiar divide between everyday life and jurisprudential thinking by meditating in both a singularly personal and stimulating theoretical way on the racist structures and seams of American society. She talks imaginatively about shopping at Benetton's,

watching television, walking around cities, and contemplating motherhood in a way that makes their discursive and constructive links with law and its workings as obvious as they are illuminating. With wit and wisdom, she comes at the crossroads of race, gender, and class from a whole set of different directions — anecdotal, metaphorical, analytical, phenomenological, and popular.

PUBLIC LAW AND DEMOCRACY IN THE UNITED
KINGDOM AND THE UNITED STATES OF AMERICA

BY P.P. CRAIG

(Oxford: Oxford University Press, 1991) 440 pages

This is an ambitious and significant contribution to the field of public law scholarship. Seemingly and enviably at ease in the trenches of legal doctrine and the more refined quarters of political theory, Paul Craig has produced a weighty volume that demonstrates how any understanding of constitutional and administrative law must be informed by the particular theory of democracy that is claimed to stand behind it. In short, law is the substantive reflection of the mediated reality of a society's democratic aspiration and actuality. Tracing an historical and theoretical projectory, Craig manages to confirm his basic thesis by utilizing his comparative knowledge of the United Kingdom and the United States. Nevertheless, the author is not engaged in the faceless reportage of legal and ideological developments. He has a definite stake in and view on the best theory of democracy to be espoused and, therefore, on the preferred course that public law doctrine should follow in the future. In short, Craig tips his hand in favour of a progressive version of Rawlsian liberalism. For him, the relevant failings of a more conservative Diceyan model and a more radical vision of participatory democracy are too great. Nevertheless, it is a book that will be of enormous benefit to liberals, conservatives, and radicals. It forces a rigorous reappraisal of the basic assumptions that influence and contain the structure and substance of public law and scholarship. It is difficult to offer or ask for more than that.

THE WALLACE STEVENS CASE:
LAW AND THE PRACTICE OF POETRY

BY THOMAS C. GREY

(Boston: Harvard University Press, 1991) 155 pages

In this elegant monograph, Tom Grey of Stanford Law School provides a valuable service to scholars of both law and literature in his stimulating look at Wallace Stevens, Poet/Insurance Lawyer Extraordinaire. Unlike many contributions to the law and literature genre, his study of this enigmatic modernist avoids a crass didacticism and offers a sensitive interpretation of Stevens's poetry as providing an interesting sidelight on the pragmatic performance of legal reasoning. Grey does not allow his legal intellect to overwhelm his poetic imagination. Instead, he uses poetry to irrigate the dry earth of legal study so that it might better cultivate a more humane harvest. It is an exciting and suggestive endeavour. In many ways, Grey's extended essay is an academic model of the "assertion, qualification, and qualified reassertion" that is the hallmark of Stevens's art. For the sceptic, Grey's efforts reassure them of the genuine merit and sophistication of contemporary jurisprudential scholarship — it can be both artistic and artful.

HIGH SOCIETY:
LEGAL AND ILLEGAL DRUGS IN CANADA

BY NEIL BOYD

(Toronto: Key Porter Books of Canada, 1991) 245 pages

The past few years has seen a marked increase in books and articles promoting the cause of legalization of illicit drugs. Mr. Boyd's book is the most recent contribution to this literature. For the uninitiated, this book is an excellent introduction to the debate; however, for the reader who has already been exposed to the arguments in favour of legalization, this book is largely redundant.

Mr. Boyd presents his case through the use of anecdotal evidence. Numerous stories are told of drug traffickers and their motivation for engaging in the illicit drug trade. By the end of the book, the author succeeds in putting a human face on the drug trade that counters the state's characterization of all drug users and

traffickers as cruel "merchants of misery." Although this anecdotal presentation is engaging and provocative, it does little to further the legalization debate. There are no new arguments presented here, and there is little discussion of the existing positions that have been advanced by other scholars.

The primary value of this book is that it serves as a counterweight to the horror stories that have become staple fare for the media, the police and politicians. The book also exposes the hypocrisy in the state policy that bans certain drugs while promoting the distribution of far more lethal drugs such as alcohol and tobacco. For the staunch supporter of a policy of drug prohibition, this book may provoke some rethinking, but ultimately, it will convert very few prohibitionists who have their own stories to tell.

EMPLOYMENT RIGHTS IN BRITAIN AND EUROPE

By Lord Wedderburn

(London: Lawrence and Wishart, 1991) 431 pages

This book consists of eleven essays first published between 1968 and 1991 by Lord Wedderburn, a renowned English labour law scholar who is well-versed in comparative legal analysis. He has been an active participant in the legal debates in the United Kingdom over the past three decades about the direction of labour law reform. Unlike its European counterparts, the British government attempted, with varying degrees of success, to reform radically the structure of labour law. Challenging the conventional characterization of British labour law as collective *laissez-faire*, Wedderburn shows how the assumptions of English common law, as administered by the judges of the ordinary courts, have undermined the collective rights of trade unions. Not content simply to borrow institutional innovations from other jurisdictions, Wedderburn demonstrates the importance of placing legal institutions and forms in their organic context. His lucid discussion of the technical subtleties of the right to strike, choices of legal form, and the European social charter will provide Canadians interested in labour rights and a social charter with extremely important comparative information. These essays offer a reminder of how careful one must be to consider how potential legal solutions to perceived problems

can be undermined either by a failure to understand that law operates in a specific social and political context as by the hegemony of certain central legal concepts, such as property rights.

CRIME, CULPABILITY AND REMEDY

BY E. PAUL, F. MILLER, & J. PAUL, EDS
(London: Basil Blackwell, 1990) 248 pages

As the title suggests, this collection of essays examines various issues relating to criminal responsibility. Individually, each essay is provocative and informative, and many of the essays were written by leading scholars in the area of criminal justice. For parts of the collection, the editors present a dialogue amongst the scholars but other parts of the collection dangle with no apparent connection to the other essays.

In the past ten years, we have seen a renaissance with respect to literature that examines the inherent contradictions within retributive thought. This collection contributes to this growing body of literature. Unfortunately, there is little innovation in this collection. However, the collection cannot be dismissed as redundant or stale. For the reader who has not been exposed to this literature, this collection serves as an admirable introduction. For the reader who has been saturated with the exploration of retributive thought and its implication for the practice of punishment, this collection still serves the important purpose of highlighting the salient issues that will, in all likelihood, never be finally and firmly resolved.