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BOOKNOTES

THE EVERYDAY WORLD AS PROBLEMATIC: A FEMINIST SOCIOLOGY

BY DOROTHY E. SMITH

(Toronto: University of Toronto Press, 1987) 244 pages

Dorothy Smith is a professor of sociology at the Ontario Institute for Studies in Education. The focus of her insightful and erudite new book is the problem presented by an established sociology written from the standpoint of men located in the relations of ruling our societies. But the book is of interest to readers other than sociologists. The essays which make up its chapters originate in the women's movement's discovery that women live in an intellectually, culturally, and politically man-made world. Sociology is just one of the institutions which make up the "ruling apparatus" of culture which Professor Smith identifies as organizing and regulating our society. Law, government, business, educational institutions, discourses in texts are among the others. As well, the perspectives of established sociology permeate our thinking and shape our ways of seeing and understanding our society.

Sociology is "a systematically developed consciousness of society and social relations." Professor Smith takes issue with established sociology which claims objectivity on the basis of its capacity to exclude the presence and experience of particular subjectivities. But she goes beyond the trap of relativity inherent in merely pointing out that sociology must listen to the voices of particular human subjects. Her project is to examine the everyday world, beginning from the particular places where we actually live, such as, women's experience from women's perspective, and from there, to explore how that particular experience is shaped by the larger social and political relations within which it operates. In her own research, she has discovered and explored the ways in which the schedules and expectations of educational institutions organize and make demands upon children's parents, especially their mothers. She

then considers the research implications of a sociology from the standpoint of women.

Professor Smith claims not to be a symbolic interactionist, nor a phenomenological sociologist, nor a Marxist sociologist, nor an ethnomethodologist. However, she acknowledges many preceptors from whom she has learned, the most important of whom she identifies as George Herbert Mead, Maurice Merleau-Ponty, Karl Marx, and Harold Garfinkel. As her list of those who have influenced her suggests, the theoretical core of her book is, at times, esoteric; but she usually illustrates the theory with enough concrete examples to maintain intelligibility for the uninitiated. Through their feminist, Marxist and phenomenological analysis of the structures of the everyday world, these essays participate in remaking the society in which they originate.

THE FOUNDERS' CONSTITUTION: MAJOR THEMES

BY PHILIP B. KURLAND & RALPH LERNER, eds

(Chicago: University of Chicago Press, 1987) 713 pages

Many forests have been logged to satisfy the commemorative demands of the American Bicentennial. In this distinguished offering, Kurland and Lerner have compiled a rich anthology of materials that contributed to the establishment of the American constitution. It makes for refreshing and stimulating reading. Yet, in satisfying our yearning to go back and discover what it was *really* all about, the hermeneutic caution must not be ignored. We can never experience that debate in its pristine immediacy; we can only struggle to hold our modern commitments in check and hope to gain a better, but never exact, approximation of the American Founders' ideas and expectations. Moreover, the American temptation to read our own political agenda into their debate and to find "original" support for contemporary viewpoints is something that Canadians must resist. Nonetheless, in this first of a five volume set, the editors and the University of Chicago Press have cause to feel much less guilty about lumbering excesses than other riders on the commemorative bandwagon.

THE FIRM, THE MARKET AND THE LAW

BY R.H. COASE

(Chicago: University of Chicago Press, 1988) 217 pages

For anyone who wants to get down to the original sources of the law and economics movement in legal scholarship, this short collection of essays must go at or near the top of the list. In this seminal work on the firm and social cost, Coase introduces the central economic concept of transaction costs. This has been taken up by Posner and his cohorts to ground an entire library of insights on law and on its operation. Interestingly, while Coase's work does lend itself to the type of free market prescriptions that lawyer/economists defend, his writing is much more richly suggestive in its political possibilities and intellectual scope. Reinforced by its cool style, this book is deserving of the attention of anyone who wants to obtain a more informed perspective on law, current legal scholarship, and their limitations.

THE PUBLIC DEFENDER: THE PRACTICE OF LAW
IN THE SHADOW OF REPUTE

BY LISA J. McINTYRE

(Chicago: University of Chicago Press, 1985) 199 pages

This sociological exploration into the workings of the public defender's office in Chicago is insightful and provocative. Although the legal profession in Canada has shown a preference for private counsel funded by legal aid programs, the discontent expressed over current legal aid funding may renew interest in the creation of public defence lawyers. Lisa McIntyre attempts to explore the myth that public defenders are merely ineffective lawyers who serve state interests. Public defenders have been disparaged as a result of the view that it is impossible to defend against the force of the state while being a state employee. McIntyre shows that the P.D. is not a "penitentiary deliverer" but, rather, a defender who is at liberty to pursue a zealous defence for his or her client.

The book begins by chronicling the evolution of the constitutional guarantee of a right to counsel. McIntyre indicates that the advent of public defence in Chicago was a response partly

to the constitutional requirement that all accused be represented, if so desired, and partly to claims that the wheels of justice were horribly inefficient. To a certain extent, this inefficiency was attributed to corrupt private attorneys who were on the payroll of organized crime. It was believed that a state-employed defence attorney would not be subject to the same corrupt influences. Although the institution began as a state instrumentality, McIntyre shows how the current organization and structure of the institution permits the public defenders to pursue their calling with independence and integrity.

One anomaly remains. If public defence is truly a viable mechanism for effective advocacy, why has the image of the P.D. remained tarnished by accusations of state co-optation? McIntyre explains the persistence of the "stigma of ineptitude" by the contradiction inherent in the role of a state employee challenging state authority. She claims that the survival of the institution depends upon its ability to remain obscure. The public defender performs as competently as private counsel. However, the defender must remain in the shadows and not trumpet its successes.

The detailed descriptions of the organization of the office of public defender and the interviews with numerous P.D.'s are illuminating. At times, the author meanders and the impact of her observations becomes diffuse. However, for the most part, the themes expressed in the book are clear and well argued. Not only does the author explore ethical dilemmas that confront the public defender, but she also examines the ethical problems that all criminal lawyers must face. So, even those lawyers who are deeply committed to the current Canadian legal aid regime will find McIntyre's observations to be relevant and, at times, painfully revealing.

SHYLOCK'S RIGHTS: A GRAMMAR OF LOCKIAN CLAIMS

By EDWARD ANDREW

(Toronto: University of Toronto Press, 1988) 228 pages

This book provides a clever inquiry into the appropriateness of rights talk in contemporary Canadian society. Arguing that the *Charter* was not "a welfare cheque ... from the Trudeau government,"

Edward Andrew contends that liberalism confuses rights with right and turns a blind eye to the interests that are served by a regime that is dominated by a rights ethic. In an eloquent and engaging style, Andrew weaves together literary criticism, philosophy, and political science to demonstrate that an eviscerated Lockian philosophy has given rise to a practice of political life that encourages people to see others as aliens or strangers rather than as citizens connected through a common humanity. Shylock stands as the quintessential modern liberal who is permitted to do individual wrong in the name of social right. In a stinging assessment, Andrews chastises rights talk as little better than a "moralized amorality and rationalised unreason." It is a provocative and important book that warrants attention by all lawyers.

SURROGATE MOTHERHOOD: THE LEGAL AND
HUMAN ISSUES

BY MARTHA FIELD

(Cambridge, Mass.: Harvard University Press, 1988) 215 pages

In this book, Martha Field surveys the range of normative issues within and mechanisms for the legal regulation of surrogacy contracts in the United States. She reviews contract, constitutional, custody, and adoption law, as these areas of law might apply to surrogacy. She also examines the claims of biological parents, particularly of biological fathers, to the children. Professor Field concludes that surrogacy contracts made before birth, like adoption contracts, should be unenforceable. A woman who withdraws consent from the contract for surrogacy should be allowed to retain custody of her child without having to prove that she is a better parent in a custody suit with the biological father. The book sets out the competing values at stake in the debate regarding the legal regulation of surrogate motherhood, and it provides a concrete proposal for dealing with the difficult moral and legal dilemmas in a concise and accessible style. Professor Field has set out to address an audience of lawyers and laypersons alike, and her book should prove to be informative to both.

EARTH AND OTHER ETHICS: THE CASE FOR
MORAL PLURALISM, 1st ed.

BY CHRISTOPHER D. STONE

(New York: Harper & Row, 1987) 280 pages

The need to recognize and confront the environmental challenge is well past. More than makeshift responses, however well-intentioned, are required. The crisis is not a failure of technique but a poverty of commitment. An effective and lasting solution to our predicament can only come from a radical reorientation of our way of thinking about ourselves and our moral responsibilities. In this stimulating monograph, Christopher Stone takes this intellectual challenge seriously and offers an unconventional ethic for contemporary living in all its facets. Presented in a characteristically witty and engaging style, his brand of moral pluralism forces any self-respecting citizen to re-evaluate their stance on a whole range of issues. Although he is a lawyer by profession, Stone manages to combine a genial scepticism with a moral optimism and produces a tempting ethic for modern times. While not everyone will be persuaded, the importance of Stone's contribution ought to be judged not so much by the answers it offers as by its re-drafting of the questions to be addressed. This is a book to be read and re-read.