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Book Notes

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INTERPRETATION AND SOCIAL CRITICISM

By Michael Walzer

(Cambridge, Mass.: Harvard University Press, 1987) 96 pages

What is the task and responsibility of the critic? Where is the (dis)location of the critic? What is the status of criticism as a social practice? In this monographical essay, Walzer offers his Tanner Lectures on Human Values from 1985 as a suggested and suggestive opening to further answers. Eschewing the worth or possibility of inventing or discovering a moral *modus vivendi*, he puts forward an engaged form of critical practice. In measuring and assuming a critical distance from social engagements, the critic must remain connected and committed to illuminating "what is the right thing for us to do?" Apologetics and romanticism are simultaneously too close and too far from the contemporary locus for social struggle or moral meaning. The Walzerian critic is someone who takes his or her responsibility to scrutinize and improve the terms and conditions of social life seriously and actively. Although cryptic and tentative in parts, the book is an excellent introduction to the duties and dilemmas of the self-respecting critic.

LLOYD'S INTRODUCTION TO JURISPRUDENCE

By Lord Lloyd of Hampstead and M.D.A. Freeman, eds

(Toronto; London: Carswell; Sweet & Maxwell, 1985) 1257 pages

In recent years, jurisprudence has ceased to be the lawyer's extroversion – and only of some at that – it has now become a major feature on the landscape of moral philosophy, political theory and sociology. In this new edition, the editors have tried to extract the best of the recent explosion of jurisprudential literature. There are new sections on Critical Legal Studies and Economic Analysis of Law, and greater attention has been given to rights theorists like Ronald Dworkin, John Rawls, and Robert Nozick. Also, the section on Marxist legal thought and sociology of law has been revised and

refocused. All in all, it represents a smorgasbord of juristic treats. If anything, it seeks to be too compendious in its reach and scope. Yet, its blend of edited extracts and critical commentary is a successful dish and ought to excite the intellectual palate of any self-respecting lawyer.

SOCIOBIOLOGY AND THE LAW: THE BIOLOGY OF ALTRUISM IN THE COURTROOM OF THE FUTURE

BY JOHN H. BECKSTROM

(Urbana: The University of Illinois Press, 1985) 151 pages

This is a fascinating and provocative book. Beckstrom attempts to apply the insights of sociobiological theory to a variety of legal situations. Led by the publication in 1975 of Edmund O. Wilson's *Sociobiology: The New Synthesis* and Richard Dawkin's *The Selfish Gene*, this fledgling "science" maintains that humans have genetically programmed tendencies to behave in certain ways. While often affected by mixing with environmental and cultural influences, these biological predispositions allow us to predict human behaviour. Beckstrom utilizes the sociobiological claim that we are genetically predisposed to aid others to understand, criticize, and contribute to the reform of intestate succession, child custody, nervous shock, and other topics. Beckstrom's analysis is sure to create considerable controversy. Sociobiology has come under heavy attack in the scientific community and there is no reason to think that the legal community will (or should?) react differently. It is a thought-provoking, original, and for some, scary book.

ASSESSMENT OF PERSONAL INJURY DAMAGES

BY CHRISTOPHER J. BRUCE

(Toronto: Butterworths, 1985) 358 pages

In an attempt to improve its crude and arbitrary calculation of tort losses, the courts have turned to the use of "expert" evidence and have incorporated a variety of financial concepts into legal doctrine. Most legal texts are content to report these changes. In his concise text, Christopher Bruce, a Calgary economics professor,

offers an informed and impressive analysis of the strengths and weaknesses of the relevant statistical techniques and mathematical concepts. In a coherent and lucid manner, he brings together a host of technical reports, studies, and data from different sources and perspectives. Few topics remain untouched, and the reader cannot fail to come away from the book with an improved grasp of the arcane doctrines of damage assessment. Whatever the reader's brief – to improve, manipulate, or condemn the prevailing rules – Bruce's monograph is a valuable aid.

THEORIES OF EVIDENCE: BENTHAM AND WIGMORE

BY WILLIAM TWINING

(Stanford; London: Stanford University Press; Weidenfeld & Nicolson, 1985) 265 pages

For many, the law of evidence seems like "a pile of builder's debris"; it consists of an endless list of exceptions to exceptions to exceptions. Yet, despite its piecemeal and pragmatic historical development, evidence scholarship remains intensely rationalistic in its foundations and aspirations. In this stimulating monograph, William Twining provides an accessible and challenging account of the work of two of the intellectual giants in the pantheon of legal greats – Jeremy Bentham (1748-1832) and John Henry Wigmore (1863-1943). Apart from offering succinct essays on their evidential work, he manages to locate them in a much broader intellectual tradition and in a continuing series of protracted controversies over the nature of proof and evidence. Twining's thesis is that "in law as elsewhere, genuine philosophical sceptics are rare birds" (at 178) and that most work in evidence, even the highly critical insights of a Bentham, share a strong belief in the possibility of a rational science of evidence. In connecting current debate with its past heritage, Twining has demonstrated the strengths and weaknesses of the Rational Tradition and, as such, has emphasized the need for a re-invigoration, if not a reorientation, of evidence scholarship.

LAW, LEGITIMACY AND THE CONSTITUTION

BY PATRICK MCAUSLAW & JOHN F. MCELDOWNEY, eds
(London: Sweet & Maxwell, 1985) 219 pages

In the age of the Charter, it is refreshing to find a couple of books, albeit British, that consider the broader problems of constitutional governance today. They are both collections of essays by English academics that, on the centenary of Dicey's *The Law of the Constitution*, re-examine traditional constitutional theory in light of contemporary governmental practice. At the heart of this discussion are the pressing problems of the appropriateness and efficacy of democratic controls over government power and the legitimate exercise of that power. Whereas *The Changing Constitution* offers a fairly traditional perspective on contemporary practice and offers a set of pragmatic proposals for reform, *Law, Legitimacy and the Constitution* tends toward a more critical analysis and argues for more wholesale changes. Although the discussion is rooted in the tradition and current performance of British government, there are many telling insights and observations for the Canadian public lawyer about neglected issues of executive power and democratic accountability.

EQUALITY AND JUDICIAL NEUTRALITY

BY SHEILAH L. MARTIN & KATHLEEN E. MAHONEY, eds
(Toronto: Carswell, 1987) 430 pages

This timely collection began life at a conference held at Banff, Alberta in May 1986. As with all such publications, the quality is mixed and the prospectives are varied: contributors range from academics through judges to politicians. Nonetheless, they all combine in their efforts to give life to the idea that judicial neutrality – the objective and value-free resolution of legal disputes – is attainable or desirable. Averaging a snappy ten pages a piece, the thirty-six essays operate at a number of levels, ranging from high theory to concrete analysis. Particularly stimulating are those pieces informed by feminist ideas and ambitions. Indeed, some of these papers show feminists' illuminating power in emphasizing the

practical importance of a sound theoretical standpoint. The strengths of the book are to outline the agenda and to sketch the challenges ahead. As Maureen McTeer concludes, "[T]he task for all of us is to ensure that these programs and processes are implemented."