BOOK REVIEWS

Thinking About Law edited by Rosemary Hunter, Richard Ingleby and Richard Johnstone (Sydney: Allen & Unwin, 1995) pages i–xiv, 1–254. Price $29.95 (softcover). ISBN 1 86373 842 8.

This is a neat little book, neat being the word which most often comes to mind as I read it. As an introductory text for first year students it more than serves its purpose. What it lacks in wit it makes up for in clear, concise, tangible explanations. Unlike a similar introductory text,[1] there are few witty analogies and colourful quotes, which on the one hand makes this a drier read for someone more familiar with the material, but has the advantage of not frightening off those who don't get the joke.

Thinking About Law is mostly an unpretentious book, presenting the various theories and case studies in a straightforward, systematic manner. The bibliography is excellent, although, generally speaking, there are insufficient footnotes. It may be that the authors were concerned not to overwhelm the novice with a reference accompanying each statement, however this reader felt that it was often the case that positions were put forward without providing any authority for the argument. Although it could be argued that to inundate a text such as this with countless footnotes would be contrary to the spirit of the book, being an introductory text which presents theories which challenge the legal orthodoxies, the book sometimes made the various ideas appear too simple.

One of the virtues of this book is that it is written in an extremely uncluttered way. It is very readable, and because of this, very comforting. But this in turn leads to one of its vices. I am concerned that it might lull a newcomer to this material into a false sense of security because the ideas are not presented in all their depth and complexity. Most, if not all, of the theories presented have challenged the *status quo* in some way, sometimes in significant ways. I am not sure that a first year student would discern from this book the sense of fear and excitement which has accompanied the development of these concepts.

Part one is a re-presentation of the relationship between black and white law and culture, and a retelling of the story of invasion/occupation/settlement (careful ...). While I personally found that this was written in an over-simplistic fashion, it would appeal to a person unfamiliar with the criticisms of white law in Australia. This section covers the areas of contention, being representations of Aboriginal law and society before Cook, the legal basis and consequences of European settlement in Australia and the Murray Islands case.[2] The section reads as an interesting story where the different themes are presented in a chronological narrative, effectively leading up to the 'high point' in relations between black and

[1] Margaret Davies, *Asking the Law Question* (1994).
[2] *Mabo v The State of Queensland (No 2)* (1992) 175 CLR 1 ('*Mabo*').

white Australia, the *Mabo* case. It may be that, without the theoretical understandings discussed later in the book, the significance of some of the statements[3] will be lost on a novice reader, but perhaps the authors envisaged a process of re-reading or revisiting occurring.

The second part of *Thinking About Law* focuses more on theories, presenting them in chronological order. More self-reflective than part one, this section occasionally uses its own structure to demonstrate the hypotheses discussed.[4] Following on from the historical perspective provided in part one, part two uses Australian situations to provide context for the theories. This helps to make the theories more readable and tangible to newcomers, as well as increasing their relevance for reluctant students. Unfortunately, like the footnotes, while they are good where they are, there are not enough examples used. A lot more could have been made of the ideas presented which would have helped to integrate the concepts into a student's mind.[5]

Another of the downfalls of the desire to keep the text simple and neat is that, generally speaking, there are not enough connections drawn between political, historical and theoretical elements of the ideas presented. While this helps the reader move through the text fluidly, without having to stop and reconsider what he or she has just read, it might lead to an uncritical acceptance of the idea. In their defence, the authors have noted in the introduction that this text is designed to be read in conjunction with other materials.

Chapter two introduces liberal legal and constitutional theory. This is an important chapter in the structure of the book as the remainder of the text is effectively a critique of these ideas. The author successfully discusses the major issues involved in this topic, reducing a vast and complex area of jurisprudence to a succinct and intelligent summary. The chapter considers the philosophical concept of liberalism, the rule of law and the concept of equality, the relationship between law and morality, the separation of powers, responsible government and federalism.

Chapter three has the same basic structure as the previous chapters and those which follow. A short introduction locating the section in the context of the book is followed by a brief description of the themes to be raised. Again, a generally historical approach is adopted in the presentation of the ideas, this time being the economic and sociological approaches to law. Here, however, unlike the previous two chapters, a more in-depth study of three theorists is undertaken, with the focus on Durkheim, Weber and Parsons. This is appreciated as it makes the reader aware of the intricacies of the subject and the possibility that the other theories may also be more complex. Despite this there was not enough made of the relationship between liberalism and these theories, which is an important

[3] See, eg, Rosemary Hunter, Richard Ingleby and Richard Johnstone (eds), *Thinking About Law* (1995) 19.

[4] See, eg, ibid 43.

[5] For example, the discussion about formal equality could have referred to the incident involving the weights room at Melbourne University: *Ross & Ors v University of Melbourne* (1990) EOC ¶ 92–290.

element in understanding the relevance and popularity of these particular concepts.

Chapter four focuses on four critical approaches to law: Marxism, critical legal studies, feminism and postmodernism. My experience of university students was that the way they were first introduced to these ideas largely determined whether they subscribed to a mixture of these ideas or not. To this extent, I believe this particular chapter would be successful in drawing students into supporting these theories, or at the very least, not rejecting them outright. Again, this chapter is clear and concise, but I felt that it offered more than just the basic elements of the ideas being discussed. I am prepared to admit that it may just be my bias for these particular theories which made this chapter more enjoyable to read than others, but the writing here displayed more of the fun to be derived from thinking about law (what? fun?!).

The chapter begins its substantive section with an amusing analogy concerning Marxism[6] which catches the reader's interest and hints at the iconoclastic attitude often adopted by radical legal scholars. This is followed by a useful contextualisation of Marxism in history, which not only describes to the reader how the theory developed, but also why it is important to study Marxism (is that my bias showing through again?).

It was at this point in the book that I felt that 'theory' had finally been made vital, in the sense that it was made relevant to contemporary situations, because of its attempt to answer the Big Questions. I realised that the previous chapters had been so polite and neat, not wanting to confuse the reader or challenge him or her too much, that they had reached the point of becoming almost bland. The virtue of this chapter is that it presents the ideas in such a way that a reader might think that there is a point to be derived from studying law.

After considering the Marxist critique of the capitalist system, the chapter goes on to consider three other challenges posed to a modern understanding of law. The sections on critical legal studies, feminism and postmodernism are again interesting yet succinct, reducing confusing concepts and tricky terms to simple, logical statements. Yet again I found myself murmuring, as I had through most of this book, 'I wish I had read this in first year'. The chapter finishes with a brief summary of the effect of postmodern theory on law, which should bring optimism to any reader weary by this point.[7]

Chapter five considers the relationship between the theories presented in the previous chapters and law reform, taken here to mean 'any effort to improve the law as a legislative process'.[8] This is an excellent addition to a theoretically based text. It encourages the reader to remember what he or she has just read and apply it in a focused way. The studies, being nineteenth-century divorce law reform, the introduction of industrial conciliation and arbitration, occupational health and safety legislation and validation of land titles in Victoria, are generally based on relevant and important issues. It is likely that students will face these

6 Hunter, Ingleby and Johnstone, above n 3, 88.
7 Ibid 131.
8 Ibid 135.

issues again, having met them once in this structured format. My only complaint is that it may have been more useful to have these interspersed in the midst of the theoretical section.

Chapter six provides an analysis of the 'law in action'. This is a study of the area of law often neglected in theoretical texts, yet of value to a more complete understanding of the role of law in society. Looking at theories which may be termed psychological, this chapter considers the way in which data is gathered, and why there is a difference between the way law is supposed to work ideally and the way it works in practice. These analyses are grounded in case studies which demonstrate the principle that legal rules are best understood not as dispute resolution procedures, but as a means of justifying the decisions of legal actors.

Judicial decision-making is considered in the final chapter. A close reading of the Murray Islands case demonstrates the way judges can differ in the way they make choices. This leads into a discussion of the nature and role of judicial activity in the lower courts. Here the authors point out the difference between judicial practice in the appellate courts and lower courts. The chapter concludes with a nice little phrase which, since it serves as a conclusion for the entire book, asks the reader to reflect on what he or she has just read and consider the validity and usefulness of the ideas which have been presented.

As previously stated, my criticism of *Thinking About Law* is that it does not provide a sufficiently detailed elaboration and criticism of the theories discussed but, as the introduction to the book makes clear, this was not its aim. This book brings together diverse ideas and concepts into one accessible format, allowing an amateur to catch a glimpse of the kaleidoscope of legal history, philosophy and sociology without becoming overwhelmed or bored. I would recommend this as an investment for any first year student of law, politics, history or philosophy who is unfamiliar with the various concepts discussed in this book and is looking for a tidy introduction and summary of their main points.

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