THE SOCIOLOGY OF LAW: AN INTRODUCTION
by Roger Cotterrell
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In an earlier number of this journal it was argued that a process of internationalization has been occurring within the sociology of law during the last decade or so.1 Roger Cotterrell's introduction to the sociology of law is yet another fine illustration of this trend. In recent years, we have seen the publication of a number of other similar introductory texts, also with broad aspirations.2 Cotterrell's offering is certainly one of the best of these. This is not to say that this book does not have its faults, it is however probably amongst the best of the recent introductions to the sociology of law that this reviewer has read. It is theoretically sensitive, restrained in its assertions and well balanced in its appraisal of research and theorizing in this field. Although the author modestly proclaims that his 'text does not set out to propound its own new and original legal theory' (p vii), his discussion is nevertheless theoretically illuminating in its effort to re-evaluate the accomplishments of others who have sought to theorize within the tradition of the sociological approach to law and legal studies. In doing this, Cotterrell ranges across a century or more of legal sociological analysis and theory. Much of this analysis is inevitably thin although it never verges on the trivial.

Cotterrell's text seeks 'to suggest elements of a reasonably consistent analytical framework' (p vii). Unlike some other writers of recent introductory sociology of law texts,3 it is often difficult to grasp which particular framework Cotterrell is himself attached to as he is, if anything, quite eclectic in his approach and quite rarely does he feel it necessary to proffer his own opinions or to clarify his own position. This is an altogether too polite, or restrained approach especially if one is to 'advance the literature', as Cotterrell hopes to do (p viii). There is something to be said for a more provocative argument, but the absence of this is not necessarily a major fault in an introductory text.

Cotterrell's book is as has been suggested above, quite wide-ranging. The first two chapters explore fairly broad, if conventional concerns. These are, firstly, the social basis of law, with particular reference to Sumner and Ehrlich; and secondly, the
instrumental approach to law and social change. These are followed by three chapters providing, firstly, an introduction to functionalist socio-legal theory and secondly, illuminating the relationships between law, power, and ideology (essentially a chapter on Marxist theorizing on law); thirdly, there is what is probably the core chapter in the book, dealing with problems of the acceptance and legitimacy of law. This is followed by three fairly competent chapters on the legal profession, courts and disputes and finally, the enforcement and invocation of law. Probably the least satisfactory part of the book is what Cotterrell calls his prognosis for law in his final chapter. This chapter fails to do anything more than to raise a series of questions concerning legal authority, informalism, delegalization, access to law and the democratization of law. Not surprisingly, Cotterrell does not differ from most other contemporary sociologists of law in failing to answer these questions. However, the manner in which these questions are put is quite helpful.

In view of the inconclusive nature of this final chapter, it is probably more appropriate to seek to trace various threads which flow through the entire text as these illustrate the real value of this book. Its many thoughtful ideas are perhaps better appreciated by this method. Some of these threads include, firstly, the nature and direction of theory in the sociology of law, secondly, the importance of law as ideology, and thirdly, the apparent isolation of law from the society in which it exists. These are central questions for sociologists of law today and Cotterrell is certainly not reluctant to tackle these head-on.

Let us begin by looking at Cotterrell's attempt to chart the nature and direction of socio-legal theory. He urges that the value of the sociology of law is based upon its attempt to avoid a 'rigid disciplinary compartmentalisation' (p 8). He therefore argues in favour of reducing the boundaries between law and sociology, two disciplines which he sees as having much in common due to their respective attempts to cover the totality of life (p 5). For this reason, he sees attempts to link law with much narrower disciplines, such as economics or policy analysis, as being far less fruitful. For example, he argues that studies of law and social change offer 'relatively few insights into the nature of society'. This is because they lack '... a theory explaining in systematic manner the relationship between legal change and social change'. Instead, such studies merely offer '... practical guidance for the legislator' (p 68). This is a theme which has also been explored in the recent Arthurs Committee report on legal education and research in Canada, in which it is argued that the involvement of scholars in law reform efforts has failed to contribute much to an advance in our broader understanding of the relationship between law and society. As Cotterrell puts it, there is a need for a theory to take us beyond the mere listing of conditions for effective legislation (p 69). It is here that the sociology of law can help, not by providing 'a magic key to understanding' but rather by making explicit '... the logical and empirical implications of particular perspectives on law and society' (p 72). Theorizing must, he argues, be linked to serious sociological analysis if one is to penetrate the rhetoric of law (p 78). The problem becomes one of finding a bridge between what Durkheim saw as 'the local moral conditions' and the 'uniform society-wide system of state-created law' (p 82) or as, Cotterrell puts it elsewhere, this is the problem of seeking to relate general theory to the actual decisions and motivations of individuals (p 146). Cotterrell raises this problem later (see eg p 158), without really providing an answer. Whilst Durkheim failed to solve the problem of bridging this gap, other attempts to provide broader theories of the relation between law and society, such as those of Pound and Llewellyn, are seen as having
been too abstract (pp 82-84). Cotterrell devotes most attention to Parsonian functional analysis as an attempt to grapple with this problem. Whilst lucidly highlighting some of its constraints, he concludes that '... as a general approach to the study of social phenomena, functional analysis is a basic, probably indispensable tool of sociological interpretation of law' (p 99). The popularity of Luhmann's functionalist sociology of law in Europe is clear evidence of the fact that Cotterrell is not alone in this judgment, as the work of many Marxist writers also seems to illustrate. There seems to be safety in numbers. In his chapter on courts and disputes, Cotterrell sets out to apply a functional analysis. However, this is far from being a well developed exercise as Cotterrell's functionalism is somewhat dated and, not surprisingly, far from being a whole-hearted one. Whilst he correctly cautions us against the widely-held view that the central function of courts is dispute processing (pp 220-222), and then goes on to argue that courts primarily seek to assert normative order by creating and maintaining ideology (p 238), Cotterrell falls far short of providing convincing proof of this now popular assertion. This then brings us to what is probably the most provocative theme running through contemporary debates in the sociology of law namely, the ideological nature of law. Cotterrell proposes that we conceive of law as 'institutionalized doctrine' (p 46). In developing this theme, he seems to have been influenced by Arnold's Realist study, The Symbols of Government (p 108). However, he stresses that ideology is a broader conception than the symbolic approach to law, as ideology '... provides the framework of thought within which individuals and social groups interpret the nature of the conflict in which they are involved and recognise and understand the interests which they seek to provide. Similarly, ideology provides the context in which symbols are interpreted. It fixes their meaning and significance' (pp 121-122, emphasis added).

This is a highly problematic position and it shares in common with traditional jurisprudence the central place given to doctrine. Far from being a 'framework' or a 'context' within which individuals and groups operate, it would probably be more correct to see ideology as a veneer or a series of rationalizations which seek to provide the appearance of order or coherence in a far from coherent social system. In other words, ideology could just as easily be seen as epiphenomenal, so that it could be highly misleading to reduce law to ideology alone. Cotterrell seems to stop short of such a position when he observes that 'the ideological significance of law is to some extent separable from its technical effects ... Yet he adds/ ideology provides the climate of expectations and beliefs in which the technical aid of law is sought ...' (p 140). This apparent retreat to what is essentially a Realist position, leads Cotterrell to have little sympathy with contemporary economic determinist or structuralist approaches to law. For this reason, his call for the idealist-materialist polemic to be transcended, is unconvincing as a solution or as a guide for further theorising about some of the phenomena he discusses. For example, it is not clear how this conclusion helps us to deal with what he correctly sees as the particularly important sociological issue of '... the way in which individualism in legal doctrine has confronted the increasingly apparent organization in large corporate structures in Western societies' (p 131). Cotterrell seems to acknowledge the epiphenomenal nature of legal ideologies when, in discussing the legal profession, he observes that official values of professional ethics, whilst grounded in the business needs of lawyers, are more important as rhetoric and as symbols than as actual controls of legal work as such (p 200-201). This point is of wider significance as it is clear to Cotterrell that legal doctrine is far from being 'the exclusive preserve of courts
and lawyers', because enforcement practice, for example, 'actually determines the effective content and meaning of law for many practical purposes ...' (301-302). Suffice it to say, Cotterrell has appropriately highlighted the significance which legal ideology plays for the understanding of legal order. It seems inevitable that the next major developments in the sociology of law need to be directed to refining and elaborating our understanding of legal ideologies.

A third theme which is to be found in Cotterrell's analysis concerns the relationship between law and wider social phenomena. This issue is mainly explored in his final chapter, although it is also to be found throughout the book. Very early in his discussion, he notes that '... perhaps the most obvious characteristic of law ... is its apparent isolation' (p 17). He sees this isolation as being linked to, and sustained by, the professional autonomy of lawyers (p 17). Cotterrell argues that law is characterised by an intellectual isolation in that its categories can be understood '... without reference to the social environment within which it develops.' (p 18). This is reminiscent of the view of law as intellectual stepchild. This intellectual isolation of law has no doubt enabled it to be more readily perceived in instrumental terms (see p 120), despite the shaky assumptions upon which instrumentalism rests. This also highlights a tension between technical and legitimization problems in the use of law by the modern state, with technical problems calling for particularised and discretionary rules and legitimation problems calling for clearly defined rules (p 187). This issue is raised again in Cotterrell's excellent summary of the reasons for the isolation of regulatory agencies and their accommodation to the interests of the regulated (p 283-285). It is hardly surprising therefore, that he concludes that not only should we speak of the autonomy of law, we should also emphasise its 'isolation or alienation ... within the society it is supposed to regulate' (p 305). By this, he refers both to the divorce of law from popular needs as well as to the conditions for its broad popular acceptance. Paradoxically, the isolation of law has not meant its containment, but rather, is seen as having facilitated its expansion through the relegalization of areas of social life which were previously subject to informal mechanisms. Moreover, Cotterrell also emphasizes that the introduction of new state sponsored informal structures has further facilitated greater legalisation through what Mathiesen calls the 'absorbent state'. This has by now become a well worn thesis. However, rather than seeing this as a crisis of law and legal ideals, Cotterrell argues that these developments were implicit in the nature of Western law for, as he puts it, the rule of law will '... continue in the necessarily compromised form in which it has existed from the beginning of the modern era' (p 319). It is surprising, however, that Cotterrell does not seek to explain the apparent crisis in terms of a crisis of legal ideology, for it is certainly a crisis in law, although he concludes by arguing for a reduction of 'the distance between legal ideology and the perceived reality of citizen's experience ...' (p 330). He is realistic enough to realize, though, that this gap can never be closed entirely.

In conclusion, it could be said that there is a certain sense of timelessness in Cotterrell's discussions of the sociology of law. One almost gets the impression that this book might have been written a decade or more ago, when debates in the sociology of law were less provocative. This impression is partly attributable to the skillful and competent blending of older and more recent contributions to the field. Although Cotterrell's book does not engage directly with all major recent theorizing about law and sociology, such as the American critical legal studies movement, the sense of timeless-
ness in this book is misleading, as it is still very much a product of a kind of mature judgment which has been rarely found in contemporary writings on the sociology of law. Cotterrell retains such a control of his argument as to allow him to give the unusual impression of objectivity and distance from contemporary theoretical entanglements. One might be forgiven for getting the impression that Cotterrell sees himself as above it all, or at least that he believes that it is far too dangerous to spend too much time in one position. Nevertheless, the reader is likely to be impressed by the simplicity and clarity of Cotterrell's language. This is tied to an ability to avoid the all too common tendency to be too dogmatic, yet it displays a capacity to reduce complex arguments and empirical evidence into manageable quantities, without trivializing these or pushing weak concepts (such as corporatism) too far. For all of these reasons Cotterrell deserves high praise, so that we should welcome this latest contribution to the sociology of law. The blemishes of this book are relatively minor, considering its accomplishments, so that we now have a sophisticated introduction to the field. Growth and development in the sociology of law can only continue where empirical and theoretical endeavours are supplemented by textural reconstructions such as Cotterrell provides. It is through means such as these that the contemporary changes which are occurring in this field can both contribute to a firmer intellectual base and lead to a further acceptance of the value of the sociology of law in legal education and for the understanding of society.

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Endnotes

   Also, see Tomasic, R. 'The Sociology of Law' (1985) 33 Current Sociology 2-29.
5. This has recently seen the republication in English in Niklas Luhmann's influential text, A Sociological Theory of Law (1985) Routledge & Kegan Paul, London.