

Book Review

Asking the Law Question by MARGARET DAVIES (Sydney, Law Book Company, 1994) pp xi, 303.

When, as an undergraduate, I studied Legal Philosophy at Monash University, our prescribed texts were H L A Hart, *The Concept of Law* and Ronald Dworkin, *Taking Rights Seriously*. We also dabbled in some Austin. I remember eagerly enrolling in this subject as a fifth year student, hoping at last to make sense of some of the philosophical quandaries I had encountered in the law. These quandaries had not been discussed or analysed in the classroom. No stranger to theory in my Arts degree, I was hoping this subject would shed some light on 'the law question'. I was disappointed. Not enough light was shed to cast a shadow.

Having now read *Asking the Law Question* by Margaret Davies, I can only regret that this book was not written and prescribed when I was looking for answers as a 24 year old. It is an ideal text for an undergraduate jurisprudence course. The chapters cover an astonishing range of philosophical theory and other writings. The reader is taken on an exciting ramble from Jaques Derrida to Jeannette Winterson; from Oliver Wendell Holmes to Pat O'Shane, from Thomas Hobbes to Luce Irigaray.

The aspect that I enjoyed most about this book was the way it grapples with feminist jurisprudence and postmodernist thought. This makes it an intellectually exciting book to read.

The opening chapter is quirky and witty, promising an interdisciplinary approach to 'the law question'. I enjoyed the author's reflexivity and her sense of humour. It was certainly more entertaining to read than the 'black letter' law texts I was required to wade through at law school. Chapters two and three examine common law theory, Natural Law and Positivism. Although these chapters contain many valuable insights and provide a useful summary of these schools of thought, I found them hard-going. (I suspect that my difficulties were, at least in part, due to the fact that I find these schools of thought hopelessly outdated and of only historical relevance.)

However, I found the chapter covering Critical Legal Studies especially useful. In 1994, whilst teaching Torts at Monash, we ran tutorials looking at Critical Legal Studies. In preparing issues for class discussion, I found Davies' book tremendously helpful. It makes the interesting point that 'Crits' tended to originate from a 'rather narrow base of privileged white male academics from elite United States law schools'.¹

Davies also points out that some legal writers have suggested that crits have spent years debating issues in ivory towers while ordinary people continue to suffer from poverty, abuse and oppression.² However, Davies suggests that

¹ M Davies, *Asking the Law Question* (1994) 144.

² Id 152.

Critical Legal Studies has made a significant contribution with its critique of objective legal reasoning. She indicates that the work of Critical Legal Scholars has helped to create a climate where law reform is possible. Davies suggests that this is a 'good start'.³

She makes the important point that Critical Legal Theory has been criticised by black academics and activists in the United States for its description of rights as mere abstractions. Black scholars have pointed out that minority groups have placed great emphasis on rights and rules as descriptions of social needs and a source of political empowerment.⁴ I would unhesitatingly recommend chapter five to any reader who wished to learn more about Critical Legal Studies.

Even more valuable are the following two chapters which analyse feminist critiques of law and postmodernism respectively. It is not unfair to suggest that some legal academics are either intimidated by or dismissive of feminist jurisprudence and postmodernist theory. This book is a useful source for allaying fears of the unknown and shedding light on what some may regard as unfathomable.

For those who find the concept of feminist jurisprudence a contradiction in terms, the book is an interesting, lively and witty introduction. Others, who may regard postmodernism as totally incomprehensible or even irrelevant, will be surprised to find a thoroughly accessible account with incisive comments about law in the 20th century.

In 1994, our feminist reading group in the Monash Law Faculty prescribed chapter seven about postmodernism for reading and discussion. We were pleased that our notice in the law school gazette drew a good response and a new (male) attendee at our lunchtime discussion. It was a lively and successful meeting. Personally, I found this chapter intellectually stimulating and refreshingly easy to read. I would thoroughly recommend chapter seven to any academic or student wishing to read an accessible introduction to post-modernist thought.

Davies' book makes a valuable addition to the bookshelf of anyone with an interest in jurisprudence. It is an ideal introductory text to the various schools of thought which hold sway in the academy. I found its interdisciplinary approach invigorating and enjoyable. Those scholars who wish to read beyond the standard fare of 'black-letter law' will be entertained and stimulated by this thought-provoking and challenging book. Law students who are looking for answers beyond those delivered in the mainstream lecture theatre (as I was in 1988) will be richly rewarded.

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³ Id 157.

⁴ Id 161.

