Costas Douzinas, Peter Goodrich and Yifat Hachamovitch (eds) *Politics, Postmodernity and Critical Legal Studies: the Legality of the Contingent*, London: Routledge, 1994.

Subtitled the legality of the contingent, this collection of spirited, and at times opaque, essays sees itself as the first work of contemporary jurisprudence to apply systematically critical philosophy to the common law. Indeed its central claim is clearly stated on the first page:

> "[c]ontingency is the condition of legal judgment and the limit of its reason... The legality of the contingent... is tied on the one hand to the local and the particular, to the specific geography, institutions, disciplines, categories and reasons of common law, and on the other to the unique person who comes before the law." (p 1)

In a fine introductory chapter, the editors make clear their endorsement of a pervading, if massively exaggerated, post-modern sentiment that identifies a loss of confidence in orthodoxy, whether theological, jurisprudential or political. They add that the generally fragmentary sentiments of post-modernity are novel by virtue of their contemporaneity (p 3). That is as may be, but what is crucially absent here, and especially from "an ethically committed politics of law" (p 6), is any notion of truth. This is notwithstanding the fact that concerns with truth are at the heart of any legal practice. With its highly nominalist orientation post-modernism discounts any general theory of truth and its value for ethics, relying instead on a radical pluralism designed to address truth at the periphery rather than the centre. In this way the post-modernist view of law is at a disadvantage compared with its positivist and realist rivals.

Goodrich, Douzinas and Hachamovitz neatly identify the trajectory of critical legal studies as "a movement from external critiques of the effects of law to the internal reform of doctrine and the interstitial institutions of law" (p 8). It is a trajectory that, by now, contains three phases. Firstly, reflecting Marxist sociological theory, law was seen as the expression of class interest and economic domination. In this context the critique of law was designed to demystify the determinations and real conditions of law's application — a task not without merit still. Secondly, critical legal scholarship utilized structuralism to identify, via Pashukanis and Althusser, the legal form of human relation as the contract. The focus shifted therefore from an earlier emphasis on content to that of the form of the law. In Althusser's view the relative autonomy of law not only granted law a role within the economic determination of social forms but also attributed the political restraint of subjectivity, or the ideological capture of the subject, to the legal form. The reality of subjection was symbolised as legal necessity and misrecognised by the subject as freedom of choice.

What is identified as the third or "final" phase of critical legal studies is the specific focus of this book and involves a reorientation of the

politicisation of law and legal practice. In short, the more modest goal of institutional reform is on the agenda. Now the mechanism of domination is not class or power or legal structures but the legal text and its avenue of transmission, the law school. Post-modern critical legal scholarship sets for itself the tasks of reading and rewriting the texts of law, and of formulating itself as a school or body of both doctrine and rule, teaching and law. For post-modernist jurisprudes the questions become; what kind of legal subject does the critical project constitute? What law would be appropriate to a post-modern world? One could respond to this by suggesting that if post-modernist presumptions are not shared then such questions become both redundant and trivial.

The partialities of post-modernism are made somewhat clearer when we see Hachamovitz examining the contingency of judgement and concluding that there is no judgement only affect, and the problematic of the law is how this affectivity becomes normative and practical. In a similarly psychological, or more accurately psychoanalytical, fashion Goodrich analyses slips in the language of judgement to illustrate the reservoir of emotion which underlies the conscious manipulation of legal meaning.

These phenomenological and semiological emphases, while they admirably point to absences in earlier critical scholarship, do so at a cost — namely that of a focus on the powerfully enforced structural inequities of the law. These permeate its practice, conception, culture, in fact its entire habitus, to use Pierre Bourdieu's phrase. So, while some may praise the essays published here as exhilarating and hail the collection as indispensable to contemporary jurisprudence, older more establishment legal minds will know they have nothing to fear. For they will recognise that the post-modernist legal scholar has discarded the challenge of developing a fundamental critique of law's empire. Today's critic is tomorrow's chief justice. The genuine radical, on the other hand, will know that such a critique is still required, and that all post-modernism in the law can offer is the deceptive solace of contingent self-limitation.

Robert Mackie