

John Austin, by W. L. Morison, London, Edward Arnold (Publishers) Ltd., 1982, ix+232 pp. (plus index). \$22.25.

Professor Morison had already won an international reputation as a learned authority on John Austin by the publication of his article "Some Myths About Positivism".¹ This book is a more comprehensive study of the work of Austin and a highly original contribution thanks to the unique equipment which he brings to the task — a thorough mastery of the variety of empiricism developed by Professor John Anderson and of Mill's Logic.

The scientific study of law has been impeded by a body of doctrine that the putting forward of a theory as to the structure of law is the application of some form of logical constriction on law. Some theories, such as that of Kelsen, appear to find in the hierarchical arrangement of their norms a logical process, so that any challenge is not merely wrong but illogical. The struggle against these theories can take the form — and usually does — of a campaign in which logic is portrayed as a villain hampering legal thought and legal innovation. The conflicting theories help each other to impede the development of theory and, what is more significant, assist in turning jurisprudence into a field of mere preaching so that the distinction between what is the case and what ought to be the case (which really means what X — usually unnamed or undefined — wants to be the case) is confused.

Once it is recognised that laws and the legal structure are real things in the world and there is no such thing as legal logic (or lack of logic) Austin's work falls into place as an empirical, though flawed, work. As Professor Morison says (pp. 4-5):

The vital characteristics of Austin's theory are as follow. Everything we say is true, false, or senseless. When it is senseless, this does not mean that the making of the statement does not perform other functions for the speaker than making sense. The implication is only that it does not convey meaning. Significant true statements are accurate pictures of an observable reality, once we have adapted our linguistic expression to put what we really mean. This involves representing the facts we observe in the forms which they always actually possess — the forms of propositions of traditional logic. The distinctive character of the philosophy which Austin sought to apply to law is its combination of empiricism — the view that reality consists of observed occurrences — and formalism — the view that our language represents patterns of occurrences in their true logical forms.

Though today largely ignored, Austin was a major influence on the development of the law in England and the Colonies during the nineteenth century. Despite their defects in form, his works are classics, works not to be ignored by anyone seriously interested in Anglo-American legal thought. Like all classics of ideas, they carry much obsolete material. The selection of the ore from the dross is the task of the modern expositor. What

¹(1958) 68 *Yale L.J.* 212.

is ore and what is dross depends upon the legal theory of the expositor and Morison, no doubt, ironically, calls himself a "naive empiricist". He stands for the demystifying of legal theory, for treating all propositions as either true or false and subject to a common universal logic, and finds Austin unique in that the drive of his thought is in the same direction.

Austin is seen by Morison as endeavouring to set out a positive map of the legal structure of developed systems, and analysing the relations between their parts as facts. This is to be contrasted with the view attributed to Austin by professing followers as well as critics under which analytical jurisprudence is a conceptual exercise which gives no account of legal facts. This involves Morison in a detailed analysis of what Austin actually said and an exposition of what an empirical theory of analytical jurisprudence looks like. The rediscovery of the actual thoughts of a master is an important enterprise in itself. As he, with Bentham, may be taken to be the founders of analytical jurisprudence in England, the misrepresentation of the drive of his work serves to discredit the whole enterprise. However, this correction is for scholars, the sketch of an empirical analytical theory is of general significance because in order to make his position clear, Morison has to criticise both Kelsen and Hart, and the theories of Americans seeking to free law from the assumed constrictions of logic. Trained in the same philosophical school and a student in a law school which treated Austin seriously, I am predisposed in favour of what he has essayed and my assessment is suspect, but I consider it a major contribution to legal thinking, in that it calls in question the very basis of almost all current theorising about law.

It is not easy reading, particularly for those who have not had a training in philosophy. The style is spare, the reasoning concentrated and assumes a familiarity with the work of Professor Anderson, to whom (with his wife) Professor Morison has dedicated the book. It is, despite this, for anyone with genuine interest in the law, essential; for example, his dissertation in criticism of Hart on the role of judges illuminates that much discussed topic.

Besides the analysis of Austin's work, his life and relationship to Bentham and the Mills is traced, and also the course of his influence in America and Australia. He is forced to defend Austin from charges of being a reactionary, an almost customary charge, mounted by self-styled progressives to avoid facing uncomfortable facts.

Speaking as a judge, I hope, though with little confidence, that the back to Austin movement, for which the author pleads, will lead to a renewal of analytical studies in schools training the profession — they have virtually died, if one can infer from questioning counsel of recent vintage. The combined effects of obsession with the here and now, intoxication with reforming the world, and the belief in the infinite plasticity of society have almost killed the scientific study of the anatomy and sinews of the law.

The book proves that Professor Morison has the capacity to make an original contribution of a fundamental kind to the study of jurisprudence.

No one in Australia has the combination of background, learning and talent to match his. It will be a tragedy for this field if the University does not see to it that he is assisted to translate this sketch into a definitive exposition of an empirical analytical jurisprudence.

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