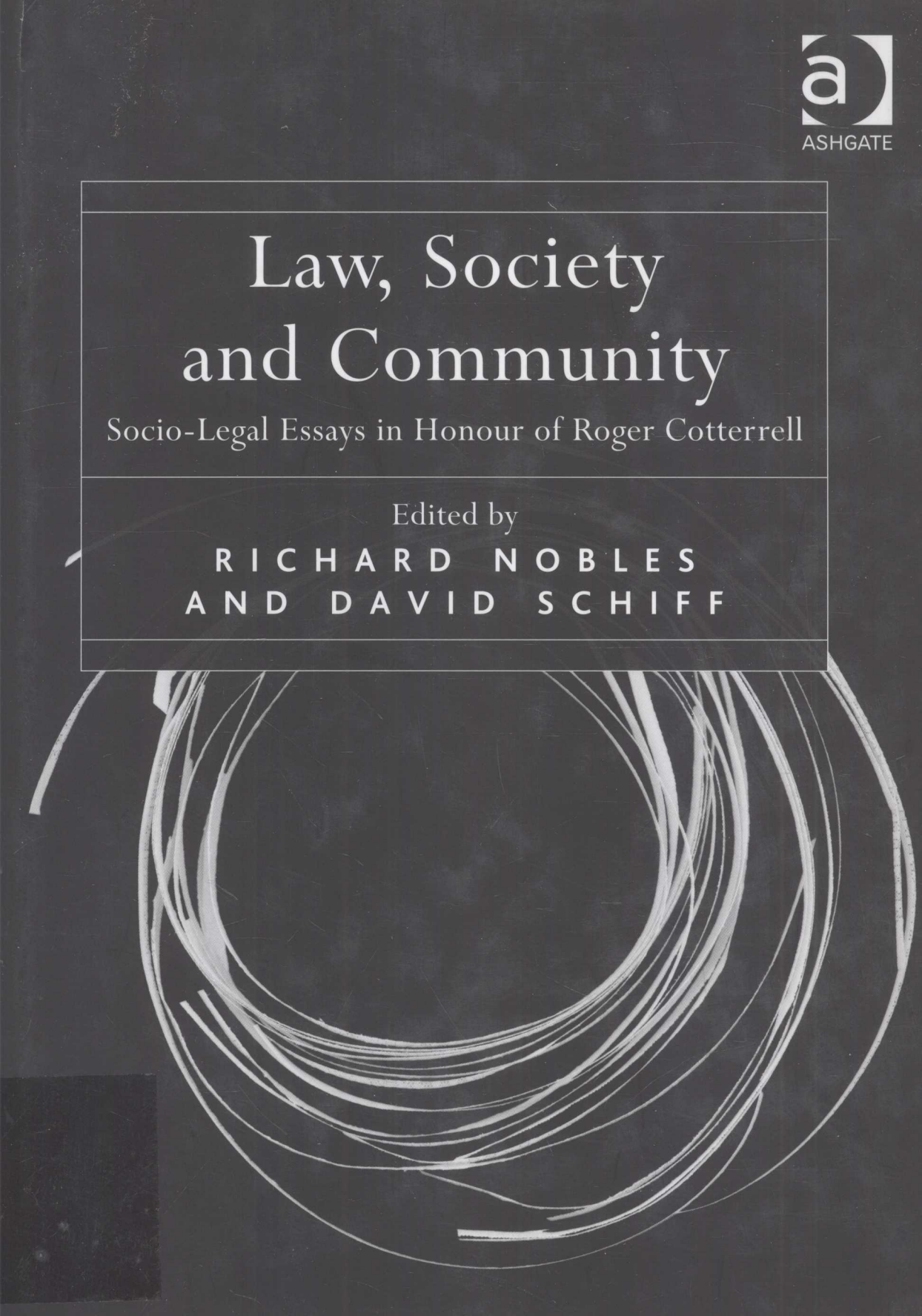
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Law, Society and Community
Socio-Legal Essays in Honour of Roger Cotterrell
Edited by
RICHARD NOBLES
AND DAVID SCHIFF

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Introduction

Richard Nobles and David Schiff

The front cover of the 2nd edition of Roger Cotterrell's *The Sociology of Law: An Introduction* includes nine pictures of some classic writers of sociology, social theory, socio-legal theory, legal history and political theory (Carl von Savigny 1779–1861, Karl Marx 1818–1883, Emile Durkheim 1858–1917, Max Weber 1864–1920, Karl Llewellyn 1893–1962, Talcott Parsons 1902–1979, Michel Foucault 1926–1984, Niklas Luhmann 1927–1998, Jürgen Habermas 1929–). Each of these writers has been adopted as part of the pioneering generation (first and/or second wave) by those writing books, such as Roger's book, on the sociology of law or socio-legal studies. These books not only adopt these classic writers, among others, as the leading theorists, but set the agenda for a new wave of interest in sociology of law and socio-legal studies from the late 1960s. Having contributed to understanding the roots for that new wave of interest, some of the authors of these books have gone on, in their own research and writing, to place themselves amongst the pioneering generation of a second and/or third wave of socio-legal thinkers. Roger Cotterrell is one of them.

Roger's writings have been adopted and are consistently referred to by large numbers of writers who now engage in the range of disciplinary and interdisciplinary subject matter that represents current sociology of law and socio-legal studies, and their many closely related subjects, such as jurisprudence and legal theory. What marks Roger's writings out as one of the new pioneering generation is the consistency of the messages represented within his publications since the 1970s, a consistency that is exemplified by the choice of classic writers' portraits on the cover of *The Sociology of Law: An Introduction*, an eclectic mix but with a concentration on leading theorists, and critical contemporary issues. Although it is obvious from reading Roger's oeuvre that it contains some clear and consistent messages, it is a consistency within his overall eclectic approach that traverses many strands within the compass of sociology of law and socio-legal studies, rather than being dominated by one strand. This is not surprising since, as he is often quoted as saying: 'An important reason for the vitality of the sociolegal community … has surely been its rich, almost anarchic heterogeneity and its consistent openness to many different aims, outlooks, and disciplinary backgrounds' (2002: 632). This is a message which has a definite context and contains a particular critique. The context is the evolution of societies, and our understanding of that evolution (often thought of as 'rapid') in the last 50 years, and the varied and changing challenges that that evolution generates. The critique is of legal studies and, in particular jurisprudence and legal theory, as being too 'conservative', overly dominated by forms of analytic philosophy, and thereby less able to respond to societal evolution and its challenges. But, this is not to say that Roger's eclecticism has reduced his status as making particular contributions to particular theories or topics. For example, Roger has a definite reputation as a leading exponent of Durkheimian sociology, and exploring in depth the nature of community and community networks in relation to law. On the other hand, he consistently responds to other theorists and other developments; his

intellectual home is, it would appear, among many socio-legal, jurisprudential, and even legal doctrinal issues, and, in particular, their inter-relationships.

It is in response to Roger's move from texts that engage with the classics,[1] towards his writing about all sorts of significant current theories, issues and debates concerning law in its broadest sense, that this book is addressed. That said, it neither attempts to react to all parts of Roger's oeuvre, nor offer a fair balance between those parts, but rather each chapter discusses a theory, topic, theme, or set of themes that mirror those that can be seen to have engaged and indeed continue to engage Roger's interest.

This book is written to honour Roger at the moment of his formal retirement from his full-time position as Anniversary Professor of Legal Theory at Queen Mary University of London. It has a secondary aim, to write about what he is so interested in, so as to encourage him to continue with his research and writing, partly as constructive criticism of some of the chapters here, which we are confident in itself will be good motivation!

It was not difficult to obtain the agreement of many to write in this volume (indeed we even had requests to participate from others, when they heard of it). However, we were reluctant to go beyond 20 chapters, and we wanted to organize a book that would be written by authors whose work we are aware that Roger specifically admires. Also we wanted to create a book that would be sufficiently diverse, to cover a reasonable range of the subjects that Roger has himself written about, but would include original contributions. At the same time we wanted chapters that would work together as a book. That is what, we believe, we have here. This is a festschrift, but it is a book of original essays that together, we hope, will contribute to the world of ideas and theories of which Roger is known to be a leading exponent.

1. Socio-legal Themes

In Chapter 1, Roger's long-standing fellow traveller, another of the pioneering generation of the second/third wave, David Nelken reconsiders the significant debate that he had with Roger in the 1990s – on how necessary it is to interpret legal ideas sociologically, and on how to do so. He does this following an overall assessment of Roger's writings, contextualized within a biography of Roger as scholar, teacher, colleague and jazz enthusiast. This introduces Roger, not only as a socio-legal scholar with a distinguished academic career, but as the eclectic, kind and deeply committed human being that this festschrift is intended to celebrate. We are very pleased that he makes such an assessment since he is, if anyone, able to put Roger's writings into that broader context (portraying a career in academia as a socio-legal scholar). Many comments in several of the other chapters re-affirm David's assessment of Roger as a teacher, colleague and friend. This first chapter performs this undertaking so well, and so thoroughly, that it relieves us of the need to do so in this introduction.

Moving on from appreciation to critical engagement, David Nelken raises an issue that will re-occur as a major theme within several of the chapters in this book, and which is central to Roger's academic writings. What are the likely results of urging legal theory to take the empirical observations of sociology more seriously? In his earlier work Roger had adopted a more traditional position within the sociology of law, in which law's inability to take account of the knowledge of society generated within sociology is part of its weakness. But later he began exploring the

1 Such as his *The Sociology of Law: An Introduction* (1984/1992), and his editing of various volumes of classic writing or writing about the classics.

possibilities for law to incorporate more knowledge of the social into itself. This is an approach which challenges legal philosophies which stress law's autonomy and independence from the rest of society. But it also raises a question within sociology itself – to what extent is law's limited ability to incorporate sociological knowledge a feature of how law operates within society, which has sociological causes and consequences. This is the basis of David Nelken's debate with Roger in the 1990s, with David arguing that there are sociological reasons why law may see the world as it does, and as such, this is not something which will change by individuals willing it not to be so, or by legal sociology increasing the supply of forms of knowledge which law cannot digest. With this chapter, David rejoins this debate, but in the new context of more recent of Roger's writings in which he attempts to bring sociological insights, arising out of his substantial knowledge of Durkheim, to issues surrounding the role of punishment and regulation in modern society. Roger draws on Durkheim's sociological account of the inter-connections between social structure, solidarity, morality and law, to consider what kinds of law might be appropriate to multicultural societies where law is called upon to reconcile and regulate different communities with different values and systems of belief. David discusses an article in which Roger (2011) considers the appropriate legal response to proposals to ban the wearing of face covering veils by Muslim women. Roger draws on Durkheim to argue that a morality of liberalism and mutual respect is particularly apposite to modern society, as this encourages communication rather than hostility between those who belong to different communities. But Durkheim does not offer a clear guide on this issue, as he also wrote on the need to regulate sexual desire by forms of modesty in every society. In his article Roger is bringing sociological knowledge to bear on a legal issue. A legal issue can be reconstructed as a sociological one. But, and this is David's point, does this mean in turn that a sociological issue can be reconstructed as a legal one, or to put this another way, can the legal issue in cases like *Begum*[2] incorporate sociological knowledge and arguments, and adjudicate upon them? In his conclusion to this chapter, David suggests that Roger may have come closer to his point of view in this latest phase of his work. He describes how Roger distanced himself from another academic's claim that his writings could be used to show the 'correctness' of legal decisions, insisting that in translating legal issues into sociological ones, he was not promoting a form of applied sociology. This kind of broadening – the application of sociology to the understanding of legal doctrine, philosophy and procedures as an exercise *within sociology*, does not give David such cause for concern.

Chapter 2, Michael Lobban's 'Sociology, History and the "Internal" Study of Law', also relieves us of a responsibility as editors: to give some description of the classic sociological theories that Roger has explored in depth, and used in his scholarship. Michael introduces the general theories of Weber, Durkheim and Luhmann, and discusses their implications for law. He does this for a purpose. The springboard for his contribution is Roger's claim, already discussed by Nelken, that legal ideas must be interpreted sociologically. Michael Lobban explores whether sociology offers the only way fully to understand how law and legal ideas operate in society, and whether, in particular, a historical method might contribute as much. This is not a claim that Roger rejects the importance of historical material; Michael notes Roger's insistence that social theory must be 'historically informed …'. Instead he focuses on two of the central concerns of legal theory – the need to understand what is distinctly legal about law, and how law operates within society – suggesting that historical methods might prove particularly useful in addressing both of these concerns.

Although historians are suspicious of theories of society, treating them as over-general interpretations which prioritize theory over empirical data, Michael notes the overlap between Weber's concept of *Verstehen* and the methodology of historians who stress the need to try to

2 *R (Begum) v Governors of Denbigh High School* [2006] UKHL 15.

comprehend what events meant to the actors at the time. This has proved an important approach within the history of ideas, and he argues that it is as an evolving history of ideas, including ideas of the legal, that law has come to be understood as having a distinct existence. Referring to works that show how historical actors separated customary law from custom, and canon law from theology, he argues that 'it is not enough to distinguish the kinds of community in which law might be located. We need to look further at how particular communities at particular times distinguish the "legal" from other normative or non-normative forms'. The particular communities that he focuses on are specialist interpretative communities – those who are recognized to have special authority to interpret law. And it is the existence of these communities (jurists and judges) who provide the internal attitude to law which gives it its distinct identity. The development of the civilian tradition, from the twelfth century, provides one example of such a community (in that case a community of scholars) that gave law a distinctly separate identity. The artificial reason developed by the intellectual community of common lawyers provides another. But the understandings of these communities (and the understandings of these legal communities by the wider community) represent a multitude of legal languages, which Michael argues need to be studied in their richness and variety, rather than ignored once they have supplied a sufficient overview to support a particular account of social evolution. There is a need to move beyond the models constructed by social theory and legal sociology, to consider the concrete interactions which occur between this specialist body of knowledge and events in wider society.

Before going on to present the historical approach to these questions about law's identity and its operation in society, Michael discusses what he sees as the weaknesses of various approaches within legal and social theory to the identification of what is peculiarly legal, concentrating on Hart, Tamanaha and Luhmann. None of these approaches, Michael argues, adequately recognize that 'the "internal" dimension of law … is less stable and coherent' than such theories tend to assume. And none, thereafter, can adequately illustrate law's impact on society. Considering how sociology of law and history correspond offers a more informed and nuanced understanding that can ameliorate the deficiencies of such approaches, and offer better appreciation of how law as part of society evolves and how it actually impacts on society, namely how law and society interact. Or, as he concludes, 'the historian's method – with its keen focus on the particular context and its scepticism for grand theory – seems in many ways the most useful one'.

Chapter 3 by Zenon Bańkowski and Maksymilian Del Mar entitled 'Images of Borders and the Politics and Legality of Identity' involves an adventurous tour, which employs images to open up our understanding of borders, particularly those territorial borders associated with states or unions of states such as the EU. Images of lines and spaces suggest contrasting possibilities for the meaning of borders within law and politics. Lines represent borders as restraints, places for an inclusion which constitutes identity and an exclusion which defines otherness. Spaces offer us the idea of borders as locations for the exchanges of ideas, opinions, and different kinds of creativity. The chapter stresses the need to think of borders as places for possible enrichment, whereby our identity can be changed through interaction rather than barriers that protect us from external threats. The argument here is not that such threats cannot arise, but rather that we systematically tend to cling to the comfort of what we know, or believe ourselves to be: 'unable and unwilling to see that things could be otherwise.'

The otherwise that might, or probably is, emerging is taken up in the next chapter, written by Sionaidh Douglas-Scott and entitled 'Brave New World? The challenges of transnational law and legal pluralism to contemporary legal theory'. Sionaidh responds to what Roger urges in his important work *The Politics of Jurisprudence*: that participants in legal processes should be 'confronted with wider theoretical perspectives [than conventional legal theory] that can …

broaden our understanding of the nature of law'. The chapter provides a 'survey of the legal field', noting developments which make it increasingly difficult to present law as an autonomous, coherent system. Modern forms of regulation, including 'soft law', not only dissolve the distinction between public and private law, but also that between law and other forms of governance. Municipal jurisdictions involve multiple sources of law that cannot be ordered into the clear hierarchy presupposed by Hart's 'rule of recognition'. And where law operates beyond state borders (as with the EU, international human rights, the contracts of transnational corporations or internet regulation) the multi-dimensionality, complexity and lack of unity of laws becomes increasingly hard to deny or, as is the case with most forms of legal positivism, to ignore. In her discussion of these developments, particularly those arising in connection with the EU, Sionaidh makes a convincing case that the empirical reality of law in modern society is one of legal pluralism, with different legal orders seeking to accommodate each other in response to their factual and normative interdependence.

The tendency to present law as a unified, coherent and non-contradictory system is, she suggests, the internal perspective of a practicing legal professional – a 'mode of construction, an organizational project, rather than a mere representation of laws that actually were organized and clear'. Sionaidh argues that the choice between theories that present law as a unitary system and legal pluralism is a false conundrum, since one is being asked to choose between a theory that fails to present empirical reality, and an empirical reality that is difficult to theorize. One needs to focus on the empirical reality, and identify its various features and interdependencies, even at the risk of failing to identify a separate object of study with clearly defined borders. Multiple legal orders exhibit incommensurability along with interaction and a heterarchical accommodation of different sources and levels of law. This is what needs to be theorized. She offers two further observations as to how this should occur. The first is a suggestive simile – the legal landscape should be likened to the Carina Nebula – a vast complex of dust, stars, gases, forces and energy (though whether one associates this image with chaos, or simply the incomplete explanations available to us through the laws of physics is unclear). The second suggestion is that understanding the complexities of the legal landscape is only a beginning. The key issue is to ask how justice is achievable, given this complexity.

To develop discussion of that key issue, Roger's own work singles out the idea of community. In the next chapter Jiří Přibáň engages with Roger's works on community in order to discuss the nature of constitutional polities. He begins with a discussion of classical sociology's concern with the decline, within modern societies, of traditional local communities, with their close human bonds, mutual affections and common values. Although this is a theme within the works of Durkheim, Maine, Simmel and Spencer, it has a clear expression in the works of Ferdinand Tönnies, with his opposition between Gemeinschaft (community) and Gersellschaft (society). Whilst the values associated with local communities continue within the family, public forms of collective life involve varieties of instrumental rationality. These changes in the nature of collective life lead to corresponding changes to the nature of law: custom and natural law being replaced by legislated positive law. Within modern society, community nevertheless continues to have importance. However, this is no longer the lived experience of a community with affective ties and common values, but the imagined community brought into existence by the decline of religion and the development of political systems into states. This imagined community also forms a nation's 'culture'. The imagined nature of this community is presented most clearly in the paradoxical nature of national constitutions, which identify the national community that has constituent power while simultaneously exercising that power to constitute the organs of government with their self-limitations.

Jiří argues that classical sociology has not provided an adequate explanation for the emergence of this imagined community with its popular culture of shared symbols, political identity and communal bonds. Jiří quotes Roger's statement that 'Law is the regulation and expression of community', but with his acknowledgement of the importance of functional differentiation within modern society this is not a claim that society constitutes a community with common values and a specific morality. Rather, communities arise within society in various forms which include instrumental relationships, affective relationships and relationships drawing on common values. Applying Durkheim to these many communities, law can be expected to arise through conflict resolution, which in deciding who is right, draws upon symbolic values whilst at the same time reaffirming those values and encouraging the conditions of mutual trust which form the essence of communities. Roger contrasts these various communities with the image of a polity as a morally cohesive collectivity linked by its shared members, so often presented in modern philosophy. Jiří extends Roger's arguments. Rather than insist that legal philosophy reflects the multiplicity of communities within society, he wishes to offer a sociological explanation for the symbolic community that arises with a constitutional polity. Drawing on Niklas Luhmann's systems theory, he argues that law and politics, as functionally differentiated social systems, construct their own versions of community 'by turning its systematic operations into the prescriptive language of culture and communal bonds'. This is part of the 'structural coupling' of law and politics. Each system, via its own version of the constitution, also generates its own version of society as a community. In this process culture replaces consensus as a basis for political legitimation. Whilst European nation states share common political features such as liberal democracy, the rule of law and human rights (see Chapter 19 in this book), their political and legal systems construct separate national identities. One particular feature of these processes is the construction of national histories, particularly biographies, which draw on a past particular to a nation's constitution and project forward to that nation's future (see as examples chapters 17 and 18 in this book). This is 'a circular process of integrating a particular nation as cultural community by the state as modern political organisation and recursively shaping the nation's culture by political decision-making and an authoritative definition of nationhood through social and education policies, the state media, state sponsorship of historical science and the humanities, etc'. Thus we can separate community and culture. The former as the many communities present within society, and culture as symbolic and unified, generated separately through the operations of functionally differentiated social systems. Culture, as generated within these systems, forms part of their memories, providing resources through which they can explain themselves to themselves as part of a national totality.

This explanation for a national polity has implications for the development of polities at the transnational level. Roger has identified the possibilities of the kinds of communities that operate within national societies developing at a transnational level, and in turn, self-generating moralities and forms of law appropriate to their need for solidarity. Jiří by contrast doubts the ability of informal networks to generate transnational polities. Roger adopts an anthropological approach, firmly rejecting systems theory's explanation of society as an autopoietic system without specific nature or morality. Jiří however accepts that systems can only constitute polities as part of their operations, selecting memories and constructing identities in order to execute their operations: collectively binding decision making at the local, national and transnational level within the political system; juridical versions of constitutions within the legal system.

Jiří Přibáň's chapter ends where the next chapter can appropriately begin. The leading socio-legal and jurisprudential theorist, Brian Tamanaha, offers a critique of Roger's seminal work *The Politics of Jurisprudence* in the form of the 'Politics' of that work. He is able to distinguish a number of political questions, and a number of different communities who operate, in practice

or theoretically, with a focus on law. Brian discusses a theme which runs through many of Roger's writings: the relationship between philosophical and sociological approaches to legal theory. He concentrates on this opposition as it is presented and discussed in Roger's *The Politics of Jurisprudence*.

Brian's is a critical chapter, sympathetic to Roger's desire to promote a more empirical approach to legal theory, but rejecting many of the arguments offered by Roger to justify this endeavour. In *The Politics of Jurisprudence* Roger argues that normative legal theory, by which he means theory that attempts to present law as a unity or system, meets the needs of the legal profession by increasing the legitimacy of legal practices. This occurs at the cost of providing law with an empirically impoverished understanding of its social context, making it a less appropriate form of regulation for the diverse communities which it needs to serve within modern, increasingly transnational society. Brian's critique takes a number of inter-related forms. He questions the shoe-horning of diverse philosophical approaches to legal theory into the category of normative legal theory, preferring Kelsen's two categories of legal science (in which one might place legal positivism) and theories of justice (in which one could place natural law). More fundamentally, he challenges Roger's claim that legal theory has any particular importance for legal practice. The characteristics which Roger attributes to normative legal theory play an important role within the legal academy, where system building and theoretical consistency are valued, but play a relatively insignificant role within legal practice. Local consistency serves the practitioner – whatever is sufficient to provide a solution to the matter at hand. The practitioner has little to gain from normative legal theory, particularly when that theory attempts to provide a general theory of law, i.e. one that is true for all legal systems, which therefore abstracts from the empirical conditions and peculiarities of particular jurisdictions. And even within the academy, there is no consensus that law is a unified system, with counter-views not only presented by post-modern theorists and US Realists, but even by academics writing in the US at the end of the nineteenth century, during the height of the period of what has been retrospectively labelled as one of 'legal formalism'.

Brian marshals a formidable body of evidence in support of his criticisms. He quotes the opinions of numerous legal academics and practitioners, particularly from the US in the nineteenth century, which refutes the relationship between normative legal theory and legal practice claimed by Roger. Rather than providing support to legal practice, normative legal theory is seen by practitioners to be largely an irrelevance: a description of law which bears little or no resemblance to the unsystematic manner in which legal issues are resolved, or the importance of individual judicial attitudes to particular decisions. The support which this form of theory supposedly offers by way of increased legitimacy is challenged and rejected by many legal practitioners, including senior judges. Brian's conclusion is not the direct opposite of Roger's claim. He does not assert that normative legal theory has provided no support to legal practice by way of increased legitimacy, but to be more precise, that one cannot reach such conclusions from identifying the potential for particular forms of theory to present the legal profession in a good light. Rather, one must oneself investigate the empirical reality of the relationships between theories which thrive in the legal academy and legal practice, a situation that is considerably more complex than Roger's approach, which asserts connections based on the possibilities of legitimacy contained within normative theory, would suggest. And if one is seeking to show that normative legal theory may be motivated by a political desire to increase the support for established legal practice, one should also be alert to the manner in which empirical legal theory has been undertaken with the political desire to criticize and reform it.

Having mounted a sustained critique of the account offered by Roger of the relationship between normative and empirical legal theory, Brian ends by considering why Roger maintains a commitment towards their greater integration, asking what 'politics' inform Roger's own contributions to jurisprudence. He finds an answer in Roger's desire to see law informed both by normative and empirical theory, so that it is both non-arbitrary and appropriate to the needs of the communities that it regulates. Although he shares this ambition, he does not feel that it can be achieved by urging either legal practitioners or legal philosophers to take more notice of empirical legal theory. He sees the value of Roger's work in its contribution to sociological jurisprudence which, in contrast to legal sociology, involves the task of 'constituting a theoretical account of law grounded within the concerns and perspectives of jurists seeking an understanding of the social nature of law'.

2. Methodological and Jurisprudential Themes

The book now moves into its second set of chapters. It begins with Chapter 7 by Sanne Taekema and Wibren van der Burg which proposes the sort of cooperative exercise of producing and evaluating knowledge about law that is the hallmark of Roger's tolerant eclecticism. They suggest, relying on the second half of their title: 'How Legal Interactionism May Bridge Unproductive Oppositions.' Responding to Roger's call to interpret legal ideas sociologically, Sanne and Wibren consider the problems of integrating legal philosophy, legal sociology and doctrinal research. They suggest that this involves a process of translation, made more difficult by those who work in these various fields adopting different concepts and definitions. Lawyers and philosophers think of law as coherent doctrine (though, on lawyers, see the previous chapter by Tamanaha), whilst sociologists understand law as a general dimension of social interaction (though, not Luhmannians – see Nobles and Schiff at Chapter 13). Drawing in particular on the work of Postema and Fuller, they offer legal interactionism as a concept that can integrate these three forms of legal research, and make each of them more available to improve legal practice. Legal interactionism is a development of Fuller's division of law into enacted law (of which the primary example would be legislation) and interactional law (the primary example being custom) which 'comes into existence through a gradual process of interaction in which a standard of conduct emerges that is understood as giving rise to legal obligations'. Enacted law is closely associated with legal positivism, consisting of rules laid down by authorities. But the authors go beyond legal positivism, here drawing on the work of Postema, by claiming that the force of a law is not solely a function of its authority, or even authority plus any physical coercion that might be applied in accordance with that law, but also includes its relationship to the obligations that arise through reciprocal interactions. This means that the vertical relations which constitute enacted law gain or lose force according to the manner in which they work with, or against, the obligations that arise between citizens through social interaction. There is a further element to this issue of force, in that the vertical relationship between the ruled and rulers is itself capable of being experienced as a reciprocal relationship, where the rulers too abide by the rules that they create. The key element in all these interactions is 'relatively stable expectations of behaviour'. Enacted law that has this element of reciprocity, or which supports or seeks to give effect to the obligations that arise through social interactions, can also be considered to form part of interactional law (though the authors admit that enacted law may develop in ways that cease to connect it to interactional law, as when a contract at first expresses an underlying reciprocal relationship, and later leads to obligations that run counter

to it). Alongside these two sources of law, and in acknowledgement of the fact that some legal instruments constitute relationships that have no prior history, the authors treat mutual consent as a third basis for law, in addition to what is enacted and what emerges from interaction (giving the two examples of contract and treaty). Though here too the force of law arises not from the original consent, or the fact of enactment via contract/treaty, but in the ongoing interaction of the parties and the sense of obligation this generates.

Calling the combination of these three kinds of law 'legal interactionism' allows the authors to present law as a continuum, with enacted law which lacks the force added by interactional law at one extreme (where law is experienced as brute force or ignored) and societies entirely organized on the basis of customary law at the other. Mutual consent seems not itself to be part of this continuum, but to add an extra element of obligatory force to whichever of the other two kinds of law it is combined with. The concept is offered not only as a means to bridge the opposition between sociological, philosophical and doctrinal approaches to the study of law, but to overcome four other oppositions where these different approaches are most in tension: law in the books vs law in action; legal pluralism vs one 'coherent legal order'; law as a static vs law as a dynamic (evolving) order; instrumental vs non-instrumental views of law. The first and second of these are dealt with via the continuum just described. The need for enacted law to gain force through its embeddedness within relationships of mutual consent or ongoing social interaction means that even state law exists only as a form of legal pluralism. From this beginning, it is easy to see all legal orders as only relatively autonomous. The opposition between descriptions of legal systems that are static (doctrinal statements and philosophical attempts to provide an account of law that transcends jurisdictions and historical conditions) and dynamic is less easily reconciled. The idea of continuum is here combined with Wittgenstein's concept of family resemblance. This provides a good argument for abandoning attempts to claim that any features of law are absolutely necessary, but whether it offers an olive branch to those legal philosophers whose raison d'être is seeking to substantiate exactly this, is open to question. Lastly, Sanne and Wibren use legal interactionism to dissolve the means/ends opposition involved in discussions of law's instrumental character. Since social actors are motivated to engage with each other because of the benefits which result, and yet create normative understandings in the process, there is a sense in which all interactional law is both instrumental and not. The same can be said of any enacted laws that support interactional law. Whether this use of pragmatist philosophy really meets the claims of those sociologists who believe that law has a subordinate relationship to other social domains is again open to question. Thus this chapter presents a challenge to both legal philosophers and sociologists, but a challenge that these authors hope might enable them to resolve their 'unproductive oppositions'.

In Chapter 8, Amanda Perry-Kessaris provides an example of the application of Roger's theoretical writings on community to a piece of empirical field work. She describes undertaking an investigation into the relevance of law to foreign companies considering investing in South India. She needed a framework which connected the data that she had collected from economic and legal actors to the social context, and found it in Roger's work on law and community. This allowed her to construct an account of the part played by law in building and supporting the mutual interpersonal trust which was necessary to investment decisions. She goes on to describe how more recently, she has sought to integrate Roger's work on legal communities with Polanyi's thesis on the embeddedness of the economy. Her chapter also provides an opportunity to present something new: the visual communication of legal research. The chapter therefore contains graphical representations of the nature of communal networks, and in so doing gives readers a clear statement of the 'community' part of Roger's oeuvre.