

**Frontiers of Legal Theory**

By Richard Posner  
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RICHARD POSNER is well-known for at least three things: being a pioneer of the law and economics movement; a judge of the 7th Circuit Court of Appeals; and a prolific author of an astonishing array of judgments, articles and books. The first two elements of his prominence are evident in *Frontiers of Legal Theory*. The third is encountered more indirectly. Posner has published a further two books in the same time taken to read and review this piece of scholarship. It could be however, that this comes at a cost. Posner sets some high standards for this book. Too high in fact.

The introductory chapter of *Frontiers of Legal Theory* informs the reader that the book has two aims. The first is to assemble a range of ideas from apparently unrelated non-legal disciplines and 'bring them into a coherent and illuminating relation with each other'. The reason? '[t]o bridge the conventional academic boundaries that have made legal theory sometimes seem a kaleidoscope or even a heap of fragments rather than a unified quest for a better understanding of the law'.

The second aim grows out of the first. That is, to examine contributions from economics, history, psychology, epistemology, and statistical inference, and make them 'more accessible and useful to practitioners, students, judges, and the interdisciplinarians themselves'. The reason? Because '[w]e need legal theory above all to help us answer fundamental questions about the legal system, for it is precisely knowledge about the system, as distinct from knowing how to navigate within the system, that the lawyer's or law professor's conventional analytic techniques do not yield'.

The objectives Posner outlines are laudable. The practical effect, however, of the manner in which *Frontiers of Legal Theory* is collated and presented, makes their achievement unattainable. It is worth considering the book from these two perspectives—its collation and presentation. Their effect on the substantive aspects of the book also warrants attention.

Posner does not hide the fact that the book is largely a collation of his previous work in these disparate fields. Public lectures and published articles are revised and reprinted. The impact of this on *Frontiers of Legal Theory* is that nothing previously written in other Posner books is reproduced here. Therefore, the non-legal theories presented (defined as the tools from non-legal disciplines to analyse the law), are limited. Excluded from the list are, among others, feminism, law, literature, and critical legal studies.

In fairness, it might not be possible to represent all non-legal disciplines, their methodologies, tools and analysis of the law in one compendium. But this detracts from the book. Instead of including the most influential or interesting theories from various non-legal fields, what is presented are simply those theories which haven't been collated into a book authored by Richard Posner. This does not seem an appropriate way to establish a table of contents.

We might accept, however, that the 'collation' problem is not crucial. Insights from important fields of economics, history, psychology, epistemology, and statistical inference are still represented. But this, unfortunately, does not remedy the 'presentation' problem. Each of the chapters representing the non-legal disciplines chosen vary considerably in style and consistency. What one might have expected to see, given the terms of the opening chapter and title of the book, was an approach approximating the following structure. First, an introduction to the particular methodological approach of the discipline under scrutiny. For example, what are the tools of a sociologist or psychologist? Second, an application of the discipline's tools to particular legal issues (or even the same legal issues so the reader can contrast the results). Then, finally, a critique and comparison of the discipline's approach and outcomes.

This general style is adopted only sporadically. What occurs more often is that a particular discipline is presented, and then rejected in favour of the economic approach. In some cases Posner takes material written by other academics as his starting point. He does this in his analysis of historicism in legal scholarship. At other times, Posner

eschews this 'response-based' method, and simply presents his own research and thinking. Considerations of citation counting, adversarial court procedure, or the free speech market are examples.

It is evidently difficult to collate meaningfully a wide range of papers and lectures, given for different purposes and audiences, into one single volume. The lack of consistency and synthesis between the chapters and between the material chosen for review would not seem to bring them 'into a coherent and illuminating relation with each other'.

The 'presentation' problem also exists in the dearth of signposting and headings throughout *Frontiers of Legal Theory*. And this book is no *Fellowship of the Ring*. It cannot be consumed in one sitting. On numerous occasions chapters extend 40 pages and Posner does not draw breath. It requires effort not only to absorb the various insights, but also place them in relation to each other and the book more generally. More time could have been devoted to structure and organisation.

In respect of the substantive scholarship, it is difficult to comment generally on the book. The style and content varies from chapter to chapter. Some pieces were particularly absorbing, Posner's response to behavioural law and economics' studies, and review of the impact of norms as an informal means of social control, being just two examples. I would have preferred an analysis of Posner's defence of the rational choice model. Or considering Posner's views on normative law and economics moving from utilitarianism to pragmatism, a response to the attacks from Ronald Dworkin on the moral force of the wealth maximisation criterion. As noted however, there are, regrettably, other issues that distract from this task.

The introductory chapter of the book engages the reader like a compelling movie trailer. But while the concept and casting was excellent, the feature-length version disappoints. If given the chance to recapture the essence of *Frontiers of Legal Theory* for the video jacket-cover, I should simply say: 'Legal theories from epistemology to psychology—meditations in the tea room with Richard Posner'.

Reviewed by Michael Rush