

Justice and the Slaughter Bench: Essays on Law's Broken Dialectic by ALAN NORRIE. Abingdon: Routledge, 2017, 221 pp (£110 hardback). ISBN: 9781138955110.

Jonathan Franzen suggests there are two styles of authorship. First, there is 'the Status model' in which 'the best novels are great works of art, the people who manage to write them deserve extraordinary credit, and if the average reader rejects the work it's because the average reader is a philistine'.¹ Then we have 'the Contract model' where 'the novel represents a compact between the writer and the reader, with the writer providing words out of which the reader creates a pleasurable experience.'² From 'the Contract model' perspective 'difficulty is a sign of trouble',³ but from 'the Status model' perspective 'difficulty tends to signal excellence; it suggests that the novel's author has disdained cheap compromise and stayed true to an artistic vision.'⁴

Franzen, of course, is writing about fiction – specifically the novel – but his points about authorial style and connection can, I suggest, be applied to writing in general. I want to use Franzen's status / contract dialectic as a lens through which to engage with Alan Norrie's *Justice and the Slaughter Bench*.

What is Norrie's book about? His concern seems to be the dual necessity and inadequacy of law and the formation of legal judgments in a criminal context. He explores this in terms of – quoting from the book's sub-title – 'Law's Broken Dialectic' and through essays covering topics ranging from intention in the work of the Law Commission of England and Wales (chapter 3), mistaken self-defence and the 2005 shooting of Jean-Charles de Menezes by Metropolitan Police officers (chapter 4), and war guilt in Germany after World War Two (chapters 7 and 10). The first chapter – 'Judging Law's judgment' – hints at coherence through ideas of 'an architectonic'⁵ – 'a built form in an historical place ... the work of lawyers and academics creating a system based on ideals of unity and reason, according to principles of justice'⁶ – and the suggestion of a 'split between legal and ethical judgment in the modern legal system.'⁷ I cannot, of course, speak for other readers, but I found it very difficult to trace the coherence suggested in the first chapter through the text as a whole. This is, perhaps, explained by the fact that every chapter except the first has been published before, either as a chapter in a book or as a journal article.⁸ The lack of coherence makes it difficult to identify the book's argument or position with any real clarity and, in Franzen's terms, I felt like the contract between reader and author had been broken.

That said, the issues addressed in the book are clearly of immense importance, and some themes do seem to recur throughout the text, thereby injecting an element of coherence for all that coherence *per se* is not, at least to me, apparent. A general sense of the fragility and imperfection of law and legal judgment and the latent contradictions in legal structures recurs, running through the discussion of the extent to which law, in the form of the 1961 Eichmann trial, can condemn as guilty someone who apparently rejects the social and moral foundations of a court's authority (chapter 7),

¹ J Franzen, 'Mr. Difficult' in *How to Be Alone* (London: Fourth Estate, 2010) 238, 239-240.

² Ibid 240.

³ Ibid.

⁴ Ibid 241.

⁵ A Norrie, *Justice and the Slaughter Bench: Essays on Law's Broken Dialectic* (Abingdon: Routledge, 2017) 4.

⁶ Ibid 5.

⁷ Ibid 21.

⁸ See *ibid*, xv-xvi.

the contradictions and ambiguities in English law on euthanasia and assisted suicide (chapter 5), and the problematic relationship between liberal understandings of citizenship, state authoritarianism and English law on mistaken self-defence (chapter 4). The importance of a social, contextual and ethical understanding of law is another recurrent theme, particularly in chapter 9, which considers the relationship between the socio and the ethical in socio-legal studies. The sense of these themes remains general, however, and whilst, in some chapters, particular points do become clear, the text as a whole feels fragmentary and incoherent.

Some of this incoherence seems, to me, attributable to the method and style in which it is written. Ideas are invoked by reference to entire oeuvres without quotation, extended discussion or explanation – on page 169, for example, Comte, Durkheim, Weber, and Marx are invoked in just over a paragraph. It is as though the text assumes that the reader is familiar with the work of these figures, as though the message emerging from the text is that if you are not familiar with this entire back catalogue that is your fault, as though the text were written from a status rather than contract perspective. In a similar vein, when judgments are referred to on, for example, the law of mistaken self-defence, the reader is offered very little basic detail on the facts of those cases or the actual decision of the court.⁹

Franzen admits that he favours the contract model and confesses to having started but not finished ‘great’ works of literature including *Moby Dick*, *Don Quixote* and *Doctor Faustus*.¹⁰ It is, perhaps, clear that the points I have made above about Norrie’s book prioritise the contract perspective over the status model but, to balance the appraisal, what might be said from the status perspective? In attempting to answer that question I should, I think, start with a confession of my own: I am not steeped in Norrie’s past work, nor am I an expert in criminal law. I make this confession because it seems to me that you would need to be well-versed in Norrie’s past work and the criminal law to understand and really engage with this book. That means that I am not in a position to appraise the ‘status’ of this book; that is my limitation as a reader. I am not suggesting that the book does not have ‘status’, but that only those already attuned to Norrie’s scholarship will be in a position to appreciate such status as it has. This book may very well be important for those in that position – perhaps it reveals new connections or themes in work, included in the book, that has previously been published in other formats – but for those like me who are not in that position I suspect this book will go unread, or at least unfinished. My point is, then, that the book seems to me to have an appeal and connection only to a specialist audience well-versed, even expert, in Norrie’s work and the criminal law.

This is not to say that this is an unimportant book, but it is to say that it is a ‘difficult’ (in the sense in which Franzen uses the term) book. In terms of its clarity and coherence, in my view it fails to connect and communicate with a general audience interested in law and legal theory. That is unfortunate because the themes and issues it addresses are important and deserve the attention of a general audience. Perhaps there is a need for publishers to think more critically, in the future, about the value and coherence of compendium volumes like this.

⁹ See *ibid* at 65 and 68.

¹⁰ Franzen, above n 1, at 241.