

## REVIEW ARTICLES

### *Introduction*

In this issue we publish four lengthy reviews which explore theoretically and historically a set of problems posed by the culture of domination, including importantly the legal order, within which we live. In sum, those problems are (i) to understand the liberal legal order, which is of central importance in that culture; and (ii) to construct an alternative programme of theory and practice whereby liberal hegemony can be successfully challenged and supplanted by a culture of freedom and equality.

Edgeworth examines the work of the American wing of the Critical Legal Studies movement, and welcomes their robust confrontation with traditional legal thought from a generally progressive position especially at a time when the rest of America seems to be moving in the opposite direction. Yet there are limitations to this emerging critique: it seems to bear the marks of that peculiarly American combination of super-enthusiastic radicalism and theoretical naivete. Furthermore, it hardly begins to address the second problem alluded to above. On the other hand, British writers seem to have travelled further in the direction of providing answers to the practical problem of transforming society — the transition problem — beginning here and now. The second part of Edgeworth's piece deals with a major recent contribution by a British scholar to what has become known as the left discourse on rights. As the review shows us, some progressive scholars are attempting to forge not only a critique of the liberal legal order but also, in order to contest terrain conceded over many decades, a vision of a transformed normative order in which domination and exploitation have been banished.

It is particularly apposite that crucial issues are now being brought to the attention of a progressive Australian readership, such as (1) the recent exposure of comprehensive and apparently endemic corruption in governance of this society (see Block and Thomas, this issue) plus widespread cynicism about the possibility of adequately dealing with it; and (2) the likely development of a less liberal, more exploitative, more unequal society in the long term. Structural unemployment

becomes a reality. Given a potential then for a serious shift to the right, there may not be that much time left for us to develop in a reasonable degree of freedom, a transitional programme and an appealing, concrete vision of the future. These are fundamental tasks for progressive legal scholars.

This radical discourse on rights which, as Edgeworth reveals, has made considerable progress overseas, has not been greatly developed in Australia. One of the barriers has been the lack of a thorough-going critical tradition in legal discourse. In his review of a recent second edition of one of the most important radical texts on sociology of law published in the 1970's (in America) Hunt provides a timely and appropriate contribution to the process of filling that gap in our intellectual armoury. He analyses, rigorously but with obvious sympathy, some of the solutions offered by the authors to major theoretical problems they faced in attempting to move from "radical pluralism" (rooted in American realism) to a more critical position influenced greatly by the Marxist — or more precisely neo-Marxist — tradition. It is a path many of us have travelled, or are travelling, and Hunt's brief critique will be of great assistance especially in highlighting those areas where more and more rigorous theoretical work remains to be done.

The struggle for "left-rights" and a society based on the ethics of egalitarianism and non-exploitation must have its own specific features in Australia. Newcity highlights some of the historic dimensions of that struggle in his review of three volumes detailing the suppression of the right of self-expression in this country. He notes the oft-discussed colonialism and convictism and identifies the further dimension of monarchism which is not often analysed in this context. In combination these have provided a legacy of authoritarianism and a corresponding mistrust of popular expression. In respect of the histories of counter-espionage agencies discussed in Newcity's review this mistrust has almost universally operated as a means of suppressing groups on the political left. Further, given the overwhelming social democratic hegemony which currently typifies Australian politics with its tendency to further centralise and bureaucratise state power, a general loosening up of the restrictions on free speech is surely a precondition for the emergence of a democratic brake on such power.

In the past decade occupational health and safety has become a site of intensifying industrial, political and legal activity. Australian workers are developing a new consciousness about the dangers they face daily. Pearse's review of the struggle for workers' rights in the workplace maintains this Journal's commitment to analysing the issues in this area (see De Michiel). In addition to revealing the tragic toll imposed upon workers, it is, in a sense, an historical case study of the inter-relationship of hierarchic, exploitative authority relations, suppression of information and the denial of worker self-determination. It is also, at the same time, a timely warning about the construction of new policies, and bureaucratic administrations which purport to solve problems of health and safety largely *for* the workers (introducing an advanced techno-scientific discourse). What Pearse's work seems to imply, consistent with the other reviews herein and proof of the validity of the contemporary Left dialogue on rights, is that the struggle for legal rights may be a necessary — though not sufficient — part of the general struggle for worker — indeed human — freedom. And it may suggest that through the development of the theory and practice of self-emancipation workers, including legal workers, may

thereby solve many of the problems of the transition to a new society the contours of which we have as yet barely glimpsed.

*Reference*

De Michiel, Y. "The Subjected Body: An Analysis of the Occupational Health and Safety Apparatus in New South Wales" (1983) 1(2) *Aust. J. of Law & Soc.* 5-44.