

## REVIEWS

### *INTRODUCTION*

An introductory statement in the reviews section of an academic journal is unusual, but is consistent with our policy of providing a new forum for the development of a critical discourse on issues, ideas, theories and practices concerning the legal order. This section of the *Journal* will endeavour to develop arguments and explore themes rather than simply appraise a range of current books as discrete intellectual commodities. It is open to reviews of all kinds, as a comprehensive and critical discussion of the legal order must deal with all manner of contributions presented in a variety of media including books, the press, films, radio and television, unpublished materials, reports (official or otherwise) seminars and conferences, courses and curricula, fiction, poetry, art, architecture, music, sport and various forms of popular culture.

We also want to reconsider classic, little known or forgotten works that seem relevant today, in the belief that analyses of the relationship between such artefacts and the legal order of the time can assist in understanding the interactions between law and other social relations.

We intend to comment upon reviews and hope reviewers will respond where an important issue has been uncovered. We will also invite comments from others on a particular review and on relevant matters that may have been raised, in the spirit of intellectual exploration of issues important to the further understanding of theories and methods in the general field of law in society. It is envisaged that this will encourage the submission of a wide variety of topics and formats in our reviews section. Unsolicited reviews, suggestions for materials to be reviewed and for themes to be explored are welcomed.

In the following reviews, a basic theme links materials which at first glance may seem to suggest a random or even idiosyncratic selection. Our choice was guided by the belief that at least in Western societies, a general crisis in accepted truths has arisen, and that a widespread re-assessment of legal, political and economic

doctrines is taking place. Coincident with that intellectual (or ideological) turmoil we perceived another widespread phenomenon — the restructuring of national political and economic orders over the past decades towards social orders quite different from those which existed prior to World War II. The result has been the development of “corporatism”; that is, the disappearance of a clear demarcation between public and private spheres, as large scale corporate bodies, of both capital and labour, have become substantially integrated with the state sector.

The effect of these broader movements upon the present and future exercise of power and authority in western societies provides the link between our reviews. Thus, as Ryan points out, Atiyah indicates that the law of contract, now outmoded in a society where its “free market” basis has all but disappeared, needs a “complete rethinking of the nature and role of civil obligation in contemporary society”. Atiyah’s thesis according to Ryan, is “that there has been a shift...to a more functional notion of liabilities based on action in reasonable reliance on the conduct of another”. It can be argued that that shift may be a result at least in part of pressures arising from the movements referred to above. Thus, while not everyone would agree with Ryan’s view of the location of the pressures, his comment accords with our general analysis. He states: “So it could be that in contract law, the pressures from consumers are precipitating a rejection of legal principles created to facilitate the rise of capitalism in favour of principles reflecting the collective nature of the modern state”. Such a view is generally in line with the work of contemporary Marxist scholarship and that of commentators such as Roberto Unger and Duncan Kennedy in the United States who have addressed themselves to the crisis in traditional legal thought from a stance of “critical legal studies”, which is quite different from Atiyah’s position.

As Ryan’s review suggests, we consider that it is unsatisfactory to engage in comprehensive legal scholarship without at least an appreciation of the Marxist contribution to an understanding of the world, and, we would add, the views of the “critical legal studies” school. The following reviews should be read in that light. The general thrust of the rest of the review section is to assess scholarship, largely Marxist or Marxist influenced, which attempts to analyse the contemporary re-ordering and administration of power and authority. We do not expect the review section of each issue to have this emphasis, but we believe that it is necessary to examine such material so that the previous neglect of this stream of scholarship be redressed. Thus Phillips reviews works which provide the broad picture of the development of corporatist tendencies in a specific and advanced form. Ramsay assesses a special issue of *Crime and Social Justice* which attempts to analyse not only the general international context of such tendencies, but also specific developments in “law and order” in a number of Western societies. Of the books examined by O’Malley, the first seeks to provide historical-theoretical insights into the link between *Capitalism and the Rule of Law*, whilst the other analyses the specific legal responses (*Permissiveness and Control*) to the heightening social problems of a society (Britain) experiencing the severe tensions resulting from substantial social and economic transformation. Bottomley turns his attention to an area which is the centre of a rapidly expanding and significant debate — mental health and social control. His juxtaposition of a critique of psychiatry and a traditional legal text highlights the extent to which the debaters have thus far

failed to join issue on fundamental matters. It could be argued that this is not surprising given the historical tendency of lawyers to complement, rather than analyse and criticise, the “social control” function of medicine in general and psychiatry in particular.