THE COLLEGE OF LAW*

As the final stage in most lawyers' legal education in NSW and as the springboard into the legal profession, the Practical Legal Training Course at the College of Law provides a useful focal point for a marxist analysis of law. Because it occupies this strategic position at the end of legal education and at the beginning of legal practice we can analyse the College from two perspectives. Firstly, for what it indicates about legal education in general; thus those pressures which underlie and determine the fundamental thrust of all legal education in capitalist societies become most intensified at the end of that process - when the fulfilment of the very purpose of the education of lawyers is most immediate. These determining pressures are most clearly manifested at that final stage; their identification can usefully serve to reveal the way they operate in prior stages. Secondly, an analysis of the College will reveal the true nature of legal practice. These two approaches will be implicit in the following analysis.

Most comments concerning the College made by radical lawyers emphasise such things as dress requirements, the nine-to-five schedule with no-time-off (ie in contrast to university), how boring, useless and repetitive the work is and the petty authoritarianism of some people in the administration. Although it is important to recognise that this socialisation process is in operation the emphasis given to it is misleading. For a start, some of the comments are now not accurate. Thus there are no formal dress requirements (only some easily resisted hints) except in mock courts, where it is generally insisted that the requirements of the real courts be adhered to. Also, the pettiness and gross authoritarianism that had been rumoured to characterise the College under the previous Director have generally disappeared. In analyzing the College we must not be drawn off into discussion of the obvious: the socialization process which turns law students into law practitioners. Instead, our critique must focus on the core issue: what is the basic function of the College in this capitalist society.

In trying to analyse this function of the College it is helpful to understand something of its origins. It is a recent development in NSW legal education, having taken its first students in 1975. Previously the transitional stage between legal education (mainly at University) and admission as a solicitor was filled by the articled clerk system (ie where graduates were employed by solicitors purportedly for practical training on very low wages). However, the articles system did not fulfil its function. It did not produce lawyers who were competent to manage the new and increasingly complex legal needs of the bourgeoisie. It thus parallels the development of new law

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* From CRITIQUE OF LAW EDITORIAL COLLECTIVE, CRITIQUE OF LAW: A MARXIST ANALYSIS, 132-136 (U.N.S.W. Critique of Law Society 1978).

schools in NSW - at the University of NSW, at Macquarie and most recently at the NSW Institute of Technology - which brought about a fourfold increase in institutions in the space of seven years. These changes in legal education and training are responses to particular patterns of development in late capitalism as it unfolds in Australia (see previous chapter). In the particular case of the College of Law and the replacement of the articles system, the problems produced by this development drove the final nail into the coffin of a system that had always proved inadequate for the role it was supposed to fulfil.

Two immediate causes of the reform can be identified in the late 1960's and early 1970's. Firstly, there was strong dissatisfaction with the articles system in a number of quarters. Secondly, the level of payment to articled clerks jumped significantly.

One manifestation of the dissatisfaction with the articles system came in 1971 with the publication of the results of a survey of articled clerks which indicated widely-held and strongly felt dissatisfaction with their employment: the level of pay and their lowly role in lawyers' offices was both demeaning and useless as practical training. Obviously if people are employed because of the cheapness of their labour they will be allocated tasks consistent with their low status, while the potential that their previous legal education had produced will be unrealised. Thus articled clerks were generally given the most mundane jobs in the office, eg filing documents, making searches, etc. On top of this "exciting" worklife they were also "highly" paid - approximately $28.00 per week in 1970. Great work if you can get it: which they had to if they wanted to be solicitors. The obvious result was dissatisfaction.

But the articled clerks were not the only ones who were dissatisfied with the system. Some members of the profession with a little foresight (and a lot of contact with large corporations) realised that the system could not produce the type of lawyers that were required. One does not have to be a cynic to see that it was the dissatisfaction within this group rather than the dissatisfaction of the articled clerks that produced changes. The clerks' dissatisfaction merely served to highlight in a *public* way the problems which produced the pressures towards reform. It was increasingly stated (although it had long been recognised) that the articles system was not a particularly good method of introducing young lawyers to the many mysteries (especially the newer ones) of the profession. The system was not producing enough lawyers who were competent in areas that were of increasing importance - they could not meet the demands that were being placed on them by the capitalist class. Reform was necessary. The College was conceived and, after exhaustive study, born.

It should be recognised that the motor force that produced this change was not the insufficiency of the articles system as a system of training for the profession generally. That had always been the case. Articles had never

worked as they were supposed to: any experience gained was very narrowly focused. The force that produced the change was the rapidly increasing need for a particular type of lawyer - one who could handle complex legal affairs of a new type in a new stage of capitalism: a stage of increasing state intervention and regulation of capitalist activities. Until this happened there were not sufficient pressures to overcome the last barrier to reform: the profession had strong reason to oppose change to the system, for it ensured them a supply of cheap labour.

This reintroduces the second immediate "cause" of the introduction of the College which was identified earlier - rising wage levels of articled clerks. These rises produced difficulties in finding places to fit existing law graduates. Thus a new pressure against the system developed, and a significant inhibition on the pressures towards reform (ie the understandable reluctance of the profession to forego a supply of cheap labour) was removed.

This analysis of the birth of the College is reinforced by an examination of the work covered there. The function of the College is revealed firstly by an analysis of the areas of work emphasised and, secondly, by the way the different areas are dealt with - the function of the College is to produce lawyers who will protect and advance the interest of the capitalist class as a class.

Briefly stated the argument is this: the predominant concern at the College is to produce lawyers who will ensure that the *internal* commercial and personal relations of the capitalist *class* function harmoniously and predictably. A secondary concern is with *inter-class* disputes and in these situations the lawyer's natural role is seen to be as the advocate of the ruling class against the working class. Finally, this position should be contrasted with the absence of any treatment whatsoever of lawyers' participation in the direct relations of production - ie the work place or relations of work; and the relatively small emphasis given to criminal work. The emphasis here is important - direct repression is not the lawyer's *major* role. This is to be located elsewhere - as an aid to the more effective extraction of surplus value.

At the College by far the heaviest emphasis is placed on the law and practice relating to companies, partnerships, commerce, business regulation, trade practices, taxation planning (read avoidance) and the like: internal commercial concerns of the capitalist class. Similar emphasis is placed on areas which are predominantly (although not exclusively) the concern of the capitalist class: conveyancing, and to a lesser extent, probate work (ie the law relating to inheritance of property and wealth). These areas deal with the transfer of private property, whether from people who are alive (ie conveyancing) or dead (ie probate). This predominant concern can be compared to the small emphasis which is given to tenancy and consumer / debt recovery law. Residential tenancy work, for example, generally

does not pay well. When it does, however, it is usually the landlord rather than the tenant who is the client. So naturally, given the commercial reality of the practice of law outside the college, and given the role of the College (and legal education generally) as the preparation for *this particular* reality, at the College "mock lawyers" act only on behalf of landlords and never on behalf of tenants. Two points should be grasped here. Firstly, the slight emphasis which is given to these areas of law; and secondly, a significant contrast exists: in the general conduct of mock cases in the commercial and property (ie *intra*-class) areas, mock lawyers act for both sides where conflict or transfer relationships exist; whereas in *inter*-class areas (ie landlord - tenant, creditor - debtor) mock lawyers act only for the members of the capitalist class (ie the landlord and the creditor) and *never* for the tenant, the debtor or the bankrupt. This is true whether or not these are paying propositions or are handled by legal aid institutions such as the Public Solicitor. The discrepancy does not arise because of money considerations but rather must be explained in terms of class conflict.

The final stage in this analysis deals with the role of the College in reinforcing repression or social control. Although criminal work does not take up a great deal of College time or practitioners' time it is informative to understand how it is handled when it is. The criminal practice course aims to fit the budding lawyer into the system as it works in practice. It thus reinforces the existing means of repression (see chapter on Criminal Law). But it also goes further than this. There are various ways that practitioners can handle cases within the repressive confines of the system. The College treatment of criminal practice positively stresses those values and practices which will most *obviously* result in repression. It encourages an elitist attitude by lawyers towards clients; it encourages co-operation with the police behind the back of the client; and it completely fails to stress that cases can be and are regularly won by the adoption of sensibly aggressive tactics and the development of the skill of cross-examination. Needless to say nothing is said about conducting a case politically.

The instructor in charge of the criminal course has portrayed prisons as holiday camps with colour television and has related an instance where he was the helpless advocate who had to defend a working class youth who was committed to a child welfare home (read prison) for nine months "for his own good". Another instructor has made statements such as "But you don't believe what your clients tell you; the police don't arrest them for nothing". Instructors support the "principle" of co-operation with the police unbeknownst to the clients thereby affected. They uncritically stress the tactical value of passivity in the face of hostility from magistrates. They stress an elitist and dishonest relationship between solicitor and client. This dishonest relationship should be compared to the total eschewing of such dishonesty on behalf of a client even in the face of clearly manufactured evidence and lies. Lawyers are implicitly taught to ask: "Who do you trust: the upholders of justice or criminals".

The College of Law's criminal practice course is an exercise in developing repressive elitism and repressive fatalism. It teaches lawyers to distrust their clients and to trust the agents of the system. It teaches them to lose as graciously as possible; and of course, "first of all get your money from them before they're put away".

The conclusion from the analysis in this chapter is inevitable: the practical legal training provided to budding lawyers at the College is clearly class based. The analyses of the development of the College and of the *areas* of the course that are given the heaviest emphasis have both demonstrated that the major role of lawyers (and impliedly the law) is in class conflict; and more precisely, in the more effective management of the affairs of the capitalist class in a stage of capitalism where the state (and therefore law) is playing an increasingly interventionist role. Thus the major focus of lawyers' work and the major thrust of legal education is concerned with the process of the extraction of surplus value. A secondary role of law and lawyers is also clear from the analysis of the *treatment* of some of the areas that have less emphasis placed on them: in the more obvious areas of class conflict lawyers act on behalf of the capitalist class against the working class and are trained in arts of social control.

RESISTING PEARCE : THE SIGNIFICANCE OF THE REVIEW OF MACQUARIE LAW SCHOOL - THE ROLE OF MACQUARIE'S PROGRESSIVES

Gill H. Boehringer

The report of the committee established in 1985 by Macquarie University to review its School of Law[1] has largely been overlooked in the wake of the subsequent publication of the more comprehensive report on legal education in Australia commissioned by the Commonwealth Tertiary Education Commission, and produced by the Pearce Committee in 1987.[2] Nevertheless, an understanding of the relationship between the two documents is essential if we are to fully grasp the implications of the Pearce Report for Australian legal education. The Macquarie Review can now be seen to have been one of the most significant events determining the impact of the Pearce Committee's determinations. Put briefly, the Macquarie Review saved the Law School from the destruction recommended by Pearce.[3] And by so doing the Review ensured a legitimate place for a Law School with an institutional

1 REPORT OF THE COMMITTEE APPOINTED TO REVIEW THE SCHOOL OF LAW, Macquarie University (Feb. 1987) [hereinafter MACQUARIE REVIEW].

2 REPORT OF THE COMMITTEE TO REVIEW AUSTRALIAN LAW SCHOOLS, A DISCIPLINE ASSESSMENT for the Commonwealth Tertiary Education Commission, 4 vols, A.G.P.S. (June 1987) [hereinafter PEARCE REPORT].

3 *Id.* at paras 22.61-22.71.