

*Politics of Law Reform: Investigating the Powers and Influences Behind Australia's Laws*, by Stan Ross, Ringwood, Penguin Books, 1982, 295 pp. \$9.95.

Stan Ross' book has a programme: he wants to mobilise Australians to think, talk and act more politically, to get involved with change. He wants Australians to have more information on the working of social reform or rather on the many obstacles in its way. He is also a lawyer and wants to share his expert knowledge on law reform and law reform agencies with a "broad audience". He has written a political book on law, lawyers, politicians and bureaucrats and one of the curious few, at least in my experience, which has had a page removed and replaced after print (p. 181-182). This is intriguing.

Executing his programme Ross is switching his code from a political to a scientific one: he is talking about projects, field-research, interviews, case-studies, cross-check of information etc. Does this inventory of empirical research tools imply that he has also written a scientific book to be submitted to the intersubjective test of the scientific community? Before we can answer this question we have to take a closer look at the programme and its execution.

Stan Ross is tackling the task "to investigate the powers and influences behind Australia's laws" with an admirably broad frame of reference. He is opening up the scenario of the tug-of-war of how to change the law, describing all the roles to be played and the actors who play them. Here we find a detailed description of the activities of interest groups and pressure groups who are promoting change and those who are opposing it and of the activity of lobbyists in the network of Australian politics. From here we are moving to a next level of legislative change, that of the law reform bodies, most notably the Law Reform Commissions, but also other "law bodies" like the Law Foundations, the Law Council, the advisory councils, and—surprisingly to some people—the law faculties and the departments of legal studies. Ross is assessing critically the multiple roles of these agencies for reform and the structural limitations under which they operate in the Australian legal system. A further level of reform activity or rather non-activity or counter-activity is presented with the bureaucracy; in the terms of the book this is the activity of the public service and more specifically of public servants who have considerable power in the execution of legislative programmes, including to wear thin their reformative impetus or to hold them up indefinitely. Yet public servants are difficult to control, formally and by media attention and have their very own interests to serve too. Clearly this must affect the reform process. From here Ross is taking us to the politicians and their profile in legislative programmes and reform. Again structural peculiarities, here above all the internal power-play between cabinet, back-benchers and party-members at large in the Australian version of the "Westminster"-system, cause diversions and contingencies for law reform. Finally we are introduced to the judicial decision-making and the role of judges in the reform process. Appropriately a look at the High Court and the Constitution acting as control agencies for law reform concludes this scenic outline of law reform in Australia.

Ross, however, is not content only to present these actors in the

political arena in a formal enumeration of the complex roles they are playing but he is giving us also a more dramatic account of the dynamics, or if one wants to say so, the turgidity of the interaction processes in which many of these actors, and most of them at a time, are involved. It is here that the author is presenting what he calls "case-studies", a more detailed account of case-histories of particular reform projects. In this way the National Conference on Rape (Hobart, 1980) is evaluated as an example of how political values are organised on a group level in discussion and voiced in opposition to other ideological positions in order to promote change which eventually can become the new law. This new law, here in form of the amendments to the Victorian sexual offences law and the Crimes (Sexual Assault) Amendment Act, 1981 (N.S.W.) did not "go far enough" for some of the interest groups like the Women's Electoral Lobby (W.E.L.) while for traditionalists it took "the power of the wife" too far.

A second "case study" is dealing with the eventful "birth" and following first year of the Australian Legal Workers Group as an "organisation that was not tied to any political party, nor controlled by established members of the profession and that was concerned for the consumers of legal services and for *all* legal workers" (p. 45, emphasis there). Formed as such an alternative professional organisation the reported responses and obstacles to its establishment are instructive and revealing and are presenting a further good example of how political values can be transformed into organised action.

A third and last "case-study" is depicting the fully developed tug-of-war of law reform with the example of the Contracts Review Act, 1980 (N.S.W.) which lasted six years. The history of this piece of legislation "is of special interest because it demonstrates with particular clarity the forces at play in the process of achieving significant reform by legislation" (p. 157). With important economic interests at stake this particular example can demonstrate in various details the "long and tortuous path" of the improvement of the position of the consumer in opposition to business interests, involving all stages of parliamentary struggle, delay and final low-key enactment.

The result of this concept of the book as a broad scenario of the actors of the law reform scene, coloured in by detailed historical accounts of cases in which these actors can be shown in action, is a very dense and informative overview over law reform in Australia. Basically the book does not provide for any new or original information and certainly does not go further into any analytical depths than the many more detailed individual studies which the author uses as his sources. However, bringing it all together in a bold sweep has an illustrative and demystifying effect in its own right which helps to see the peculiar ways of law reform in Australia in perspective. Moreover an investigative book like this makes clear that there is not necessarily a contradiction between political programme and scientific approach. The scientific analysis in itself is a political activity while it is trying to reveal structures and notably social structures as what they are.

The only trouble with the book is that there is reason to question whether Stan Ross is offering a scientific analysis, or rather, interesting reading in the tradition of critical journalism. This question is provoked by the author in embarking not only on the set-up of a scientific study

but also on "a theory of reform" (pp. 245 ff.) which clearly is aiming at a specific rather than a broad audience. This is changing the rules of how arguments are to be presented and needs far more methodological and theoretical sensitivity than Stan Ross is prepared to apply.

Uneasiness about the way in which Ross is proceeding is caused by the fact that the two central propositions in the book, "law" and "reform", are operated without any contextual explanations. "Reform" for Ross is our desire to bring about changes in our society if we do not want to be called "narcissists" (pp. 1-3, Introduction); why and for which end we should want to change society seems to be so self-evident to him that he does not care to explain which changes he is thinking about though, naturally, there are the "cases" as normative models (cf. *supra*) and we are instructed that there is just law reform on the one hand and "social" or "significant law reform" on the other, the latter being "the restructuring of our society by *the use of law* with the goal of improving the quality of life for all its citizens but especially those that are disadvantaged under the present system" (p. 6, my emphasis). This is an ideological platform with which we can sympathise, or not, but we gain no further evidence of the social dynamics which produce change in a society, the one way or the other, and in reaction to which societies organise reform or fail to do so.

"Law" is faring even worse. There is no working definition of what Ross is considering to be law in his book, leaving us to assume that as a lawyer he probably knows what he is talking about. Certainly, there is the diagnosis of a "crisis of the legal system", a sort of perceived negative feed-back "that our present legal system does not work fairly or efficiently" (p. 8) but exactly what the law is, what its social purpose is (against which it could be measured eventually how the law is doing its job) or why societies organise law at all remains undisclosed, or is not even worth discussing. The legal structure, in Ross' account of it, is so inextricably interwoven with "the struggle for reform" that there is no question that "the law is the form in which the political and economical decisions taken by our elites [are] manifest" (p. 3) and that there is seemingly no need to analyse the functions of the legal system any further. Here is the major shortcoming of the book no matter what audience it is trying to address: by not making any serious attempts to explicate his underlying legal theory, if there is any, Ross is fusing *social change by law* and *political change of the law* into an undistinguishable hotch-potch of remarks on "the struggle for reform" which tells us a lot about political structures but very little about the legal system. Indicative here is the, at that late stage of the book useless, introduction of a "theory of reform" (p. 245 ff., largely Thomas Mathiesen's theory of political action) to the effect that "now we are armed with a theory that can help serve us for battles in concrete situations" (p. 254, Conclusion), but that we have no word of a "theory of law" which could accommodate the extreme instrumentality of the law which Ross is postulating. In fact Ross has a very simple light-switch theory of law: "We will have to *make use of the legal system* when it is appropriate and reject it when it is detrimental to the struggle" (p. 249, my emphasis). Far from taking us any further in explaining the specific structural peculiarities of the law which set it apart from the political structures in making progress socially secure and acceptable rather than promoting it,

we are once again presented with an ideological platform which basically is content with accepting the legal structures in our society as what they appear to be to "make use of" and is just changing the values with which the law assumingly operates. Changing its colours does not necessarily make for a more accurate, structural picture of the law. This is dubious, atheoretical enlightenment and in the end frustrating for both the reader and the political activist.

Stan Ross' book is an interesting and informative contribution to the discussion of law reform in Australia. In "investigating the powers and influences behind Australia's laws" it is venturing far into the territory of political theory and political sociology. There is reason to assume that Ross is methodologically not very well equipped to handle an investigation in that territory but this is no reason why he, as a lawyer, should not present his case for "the struggle of reform"—after all lawyers are, and increasingly will be, our most successful politicians, and not the "businessmen and pastoralists" as he leads us to believe (p. 137). In the field of social analysis, however, Ross' book is no exception to the rule that one should fear lawyers' writings as much as the gifts of the Danaans and mistrust them even if they advocate social change.

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