# BOOK REVIEWS

LAW AND ORDER IN AUSTRALIA. By Paul Ward and Greg Woods. Angus and Robertson, Sydney, 1972. Pp. xii, 179. $1.75.

In recent years the phrase "Law and Order" has achieved a significance not unlike that enjoyed in another age by "King and Country". It is a signal, usually but not invariably set off by politicians of the Right, for reasoned analyses of the nature of social dilemmas to cease and facile nostrums to take their place. Thus, "increased penalties will decrease crime", "greater enforcement powers will improve the effectiveness of law enforcement", and "more law will bring more order", claim the protagonists, casting aside or being fortuitously ignorant of years of careful research by observers more objective than themselves. The time is long overdue for some balance to be restored to discussion of the issue, and the publication of this book should be a highly significant step in achieving this.

The thesis of Ward and Woods is that each of the three slogans in the Law and Order package is untrue or, at best, oversimplified. For example, though deterrence is admittedly a significant factor in the problem of what makes people obey or disobey laws, it is a gross oversimplification to pretend that it is the only factor or even necessarily the most significant single factor. To illustrate this the authors describe a Philadelphia rape penalty increase which occurred in 1966 following a particularly brutal triple rape and which demonstrably had no effect whatsoever upon the incidence of rape in that city.[1]

Again, though removal of constraints upon the powers of the police might lead to an improvement in the clear-up rate, the authors contend that it would at best be marginal. "The policeman would still be bound by space and time; he would still be hampered by lack of public understanding; he would still be underpaid, insufficiently trained, poorly organized and troubled by inadequate support staff and equipment. . . . Better law enforcement will more surely result from a remedy of these kinds of difficulties than from an increase in the legal powers of the police."[2] This is clearly true, as several recent

1 Ward and Woods, pp. 22-23.
2 Id. at 26.

publications have shown.[3] But the protagonists of Law and Order seldom give a proportionate attention to such reforms. As the authors point out in another context, it may be because such reforms as these would cost money; and it is much easier to appear to be tackling the problem by passing another statute than actually to be tackling it by spending more money in a more constructive way.

As regards the more law/more order argument, the authors are enthusiastic adherents of the Morris/Hawkins thesis concerning the overreach of the criminal law.[4] The inefficiency induced in police handling of "hard" crime by having to spend as much or more time dealing with victimless crime should by now be apparent to all but the most sanctimonious politicians, but it bears repetition. Moreover, the authors fortify the point well by showing that prohibitions with regard to victimless crime may well be counter-productive not just indirectly by way of producing corruption, blackmail, organised vice, etc., but directly by producing more hard crime of the sort that tolerance of the particular victimless crime is supposed to lead to. Thus, the Danish experience suggests that the legalisation of pornography has led to a reduction in the number of cases involving indecency towards females.[5] If the implications from the available figures are valid (and the authors go out of their way to make the proper reservations), the proponents of strict laws concerning pornography should bear in mind that they are also the proponents of maintaining a high level of offences involving indecency towards females.

Closely related to this idea is the selectivity which Law and Order proponents display in their concern with ineffectual law enforcement. As the authors point out, road accidents are objectively much more damaging, in human and economic terms, than crimes of violence; yet this is never presented as a law and order issue. Firm determination to deal with the problem—by more severe penalties, greater enforcement powers and more legal regulation—seems to be lacking in the very persons who recommend such tactics in other areas. Yet in this area, as much as any, such tactics would have a chance of reasonable success. Random compulsory breathalyser tests *do* tend to

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3 Chappell and Wilson, *The Police and Public in Australia and New Zealand* (1969); Wilson and Western, *The Policeman's Position Today and Tomorrow* (1972); St. Johnston, *A Report on the Victoria Police Force* (1971).

4 Morris and Hawkins, *The Honest Politician's Guide to Crime Control* (1972), chapter 1.

5 Ward and Woods, pp. 119-126.

reduce driving under the influence of liquor and thus traffic accidents.[6] Harder driving tests might well do the same—but we shall never know this until they are introduced and evaluated. Why, they ask, are the opponents of the permissive society in matters of sex or drugs so often its proponents in matters of road safety? It is an excellent question, though not one to which they offer an answer.

This points to a weakness of the book. It is a superb antidote; articulate and witty and frankly polemical. But it does little to explain why some issues are regarded as part of Law and Order and others are not. To expose attitudinal inconsistency is one thing; but the social scientist should also concern himself with why that inconsistency exists. Then the antidote he offers has more chance of being effective. In this respect the book is a little disappointing.

There are some other disappointing features in the book. The main one concerns their proposals regarding investigations of police misconduct, where they show themselves to be surprisingly Establishment-minded. It is not possible, they say, to take such investigations out of the hands of the police. This is because "investigations must be made, witnesses seen, evidence sought by *somebody;* and *by definition the person who does these things is a policeman,* whether he is employed by the State Police Department, by the Attorney-General, or by the Council for Civil Liberties".[7] This is a rather silly quibble, confusing function with status. If someone who is not a member of the Department under investigation carries out the investigation, he can be said to be performing functions akin to police functions; but the attitude with which he performs them is unlikely to be the attitude of the Department. He will not share that Department's group standards; and as I have shown,[8] it is the presence of an ethnocentric ethic which creates the greatest barrier against effectual investigation. To propose, therefore, that investigation of police misconduct should be by the police themselves and only the hearing of charges arising from that investigation should be by outsiders misses the point. The vigour with which the Kaye Inquiry was carried out in Victoria should fortify this beyond any shadow of doubt; for the Victoria police force had earlier exonerated itself following an investigation based on the same evidence as eventually led to the setting up of the Inquiry.

This example brings to the surface another fundamental insight which the authors fail to perceive in discussing this matter. There is

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6 Id at 112.
7 Id. at 67.
8 Harding, *Police Killings in Australia* (1970), pp. 219-230.

a profound difference between matters of purely internal disciplinary concern and matters involving the commission of ordinary crime. That outsiders should have anything to do with the first would be absurd; so that even to have a hearing by an independent tribunal would be grossly inappropriate. But, bearing in mind that there is no such thing as a criminal class but that criminals are distributed generally throughout society,[9] there is a clear public need that complaints involving allegations of criminal conduct by police should be independently investigated.

This part of their discussion, then, is sloppy; but it should not be thought to detract from the overall merits of the book. A book such as this was very much needed at the present time; it should act as a sort of enema to get the falsities and half-truths and cynical complacensies of the Law and Order attitudinisers out of the reader's system.

R. W. HARDING

MANUAL OF THE LAW OF INCOME TAX IN AUSTRALIA (3rd edition). By K. W. Ryan. Law Book Co. 1972. Pp. xxii, 286. Cloth $9.25, Paper $7.75.

Professor Ryan explains in his preface that since the first edition appeared in 1965, a second edition was prepared in his absence from Australia by Dr. E. Hayek, but he has resumed responsibility for this third edition in 1972. The reviewer's first reaction was to wonder how a book on this subject could last for seven years before requiring a third edition, when the usual run of income books last a year at the most, and often require supplements during the year.

However, this is not like the other works, nor does it pretend to be. Its purpose is stated "to serve as a short and simple introduction to a body of legislation and case law which is at once extremely complex and of the highest social importance". It follows from this that the book has only 285 pages, whilst other works in the area range from 500 to 700.

The introductory chapter on the uniform tax system and the second chapter explaining the concept of income have always been the reviewer's favourites, and whilst the latter concept has never been explained in a completely satisfactory manner in any text, chapter two goes very close. As the author quotes "the Act has discreetly re-

9 Ward and Woods, pp. 27-30.

frained from saying what is income, and consequently it is to the decided cases that one must go in search of light". So the author takes the reader on an excursion of decided cases, brought up to date, with one notable exception that puzzles the reviewer. In this otherwise excellent treatise on income, and when it is derived, much is made of *Henderson's* case;[1] but one may well ask, just as many people ask in relation to her husband, "what happened to Mrs. Biggs?"[2]

The remaining ten chapters take us through income and deductions with again the emphasis on case law. This material is not for the layman and must be read in conjunction with the Income Tax Assessment Act 1936 as amended. This is a pleasant change for the student; most texts are padded with restatements of sections of the Act which, because they are printed again in bolder type, are supposed to pass for explanations. However, the reviewer is again puzzled by some omissions; for instance, in discussion of s. 26(e) the law relating to the first five words "the value to the taxpayer" does not rate a mention, although the rest of the paragraph is comprehensively treated.

Chapter 7 seems a little skimpy and could do much more by way of explanation of depreciation, particularly the s. 61 apportionment, which is important to many small businessmen. The text skates around the calculation of the balancing charge where plant is used only partly for business; the law in this area is very illogical and misunderstood and much deeper treatment is warranted.

Printing and proofing is of a very high standard and the reviewer noticed only one error—in referring to Casuarina on page 189 the word 'before' should surely read 'between'.

A. J. BUTCHART

THE CONSTITUTIONS OF THE AUSTRALIAN STATES (3rd edition). By R. D. Lumb. University of Queensland Press. 1972. Pp. 130. $4.00.

The third edition of Dr. Lumb's introduction to the written constitutions of the Australian States updates the revised second edition of 1968. There are no substantial alterations to either the structure or the contents of the previous edition and thus this book remains very similar to its predecessor: the first half of this work consists of a short account of the constitutional development of each of the States when colonies up to the time when they achieved responsible govern-

1 Henderson v. Federal Commissioner of Taxation (1970) 119 C.L.R. 412.
2 Brent v. Federal Commissioner of Taxation (1971) 71 A.T.C. 4195.

ment, and the second half contains an analysis of the structure and functions of the formal organs of government under the present constitutions of the States. The writer is sorry that Dr. Lumb has never incorporated into the first part of his book a brief account of the subsequent development of the written constitutions of the Australian States from the time that they achieved responsible government to the enactment of their present constitutions for as it is the ending of the historical introduction before this point may bewilder a reader who knows little about the present constitutions of the States. That said, however, this book may nonetheless be highly recommended to anyone who wishes to read a short and lucid introduction to the formal constitutions of the Australian States, whilst anyone who wishes to pursue a detailed examination of any of the matters that are considered in this work will find ample references to further information on these subjects in the footnotes. Would that there were a similar introductory work published in respect of the Commonwealth constitution.

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