

Book Reviews

Trade Union Security Law: A Study of Preference and Compulsory Unionism

by Phillipa Weeks, Federation Press, Sydney, 1995, xxii + 282 pp. Price: soft cover \$45.

In recent years, trade union membership in Australia has been declining. Traditionally, unions have played a key role in negotiating employment conditions in the workplace in Australia. The place of unions in these negotiations has, however, been increasingly questioned over the past two decades, and legislation previously entrenching a role for trade unions is under considerable scrutiny. There are calls for greater flexibility in the workplace to make Australian business more efficient and more internationally competitive. One way, it is argued, of making the workplace more productive is to allow workers and their employers to negotiate directly conditions of work at the local or enterprise level — enterprise bargaining. Generally speaking, there are two types of enterprise bargain in Australia: Certified Agreements and Enterprise Flexibility Agreements. While Certified Agreements are negotiated between the relevant union and the employer in respect of a particular workplace, Enterprise Flexibility Agreements do not require union participation. Enterprise Flexibility Agreements allow employers to negotiate conditions direct with their employees. The formal legal role of trade unions in Australian industrial relations is likely to be further reduced when the Workplace Relations and Other Legislation Amendment Bill 1996, currently before the Federal Parliament, becomes law.

Phillipa Weeks' *Trade Union Security Law*, is therefore timely. The book is without doubt a major contribution to the literature on trade unions, and it is likely to remain so for some time. Weeks addresses one aspect of trade unionism — union security arrangements in Australia. Weeks defines union security as 'the quest by trade unions for universal membership in the workforce' (p 212). This quest overrides 'the freedom of employers to hire and retain workers of their choice and the freedom of workers to choose whether or not to associate or not to associate with fellow-workers in trade unions' (pp 212-213).

Forms of union security include 'preference', 'closed shops', employer deductions of union dues from the wages of its employees, and the 'agency shop'. As Weeks notes, the 'agency shop', where an employee must either join a trade union or pay the union an amount equivalent to union dues for the union to represent him or her in negotiating working conditions, is little known in Australia. A 'closed shop' is a form of compulsory unionism. The employee must either be a member of a union before he or she may be employed ('pre-entry closed shop'), or the employee may be required to take out and maintain membership on appointment ('post-entry closed shop'). 'Preference', a weaker form of union security involves employers engaging a union member in preference to a non-unionist.

Weeks considers both the formal legal arrangements, and the informal 'real world' structures, providing for union security in each of the seven jurisdictions in Australia. She traces developments in these two spheres from Federation in 1901 until the early 1990s, and observes that, in Australia, there has been a strong tradition of compulsory unionism. The Federal Parliament, since 1904, has sought to encourage trade unionism by the legislative authorisation of a degree of union preference in the engagement of employees. In practice, however, until the early 1970s, decisions by the High Court of Australia and by industrial tribunals tended to circumvent the intention of the legislation. Following the High Court's decision in *R v Holmes; Ex p Altona Petrochemical Co* ('Oil Clerks Case')

(1972) 126 CLR 529, union preference has been somewhat easier to attain. In the *Oil Clerks Case*, the High Court sanctioned a scheme whereby an employer was required to notify the relevant union of a vacancy 21 days before filling it and must appoint a unionist where the unionist is capable of filling the vacancy.

Nevertheless, it is a commonplace that for the past century unions and collective bargaining have been integral to Australian industrial relations. The prevalence of union security arrangements in Australia, Weeks argues, may be attributed to negotiations between employers and unions in the informal 'real world'. The formal legal arrangements, however, remain important. They possess significant symbolic impact. Such laws validate the role of unions in industrial relations as well as offer support to the notion that unionists should be preferred to non-unionists in employment. 'It conveys to the parties that not only are formal awards of preference legitimate, but so too are informal agreements which may go further and establish closed shops' (p 98).

The book also examines, in the context of union security, those avenues available to protect the rights and interests of non-unionists. Weeks approaches this issue from two perspectives, those non-unionists who wish to belong to a union but for whatever reason (eg expulsion) do not, and those who are non-unionists by choice. As to involuntary non-unionists, Weeks observes that Australian legislatures have adopted laws limiting the reasons trade unions may use to reject potential members. 'In general the legislative schemes prohibit unions from denying membership to applicants on any ground other than occupational eligibility and general bad character' (p 163). And as to those voluntary non-unionists who object to joining a union on conscientious grounds (eg religious belief) certificates of exemption have been made available. The use of such certificates has, however, been very low. Weeks suggests that this may be because there are indeed very few employees who conscientiously object to joining a union, or it may be that there is little need for such certificates as there is little evidence of harassment of employees who choose not to join a union for reasons of conscience.

Weeks observes that in the last twenty years the orthodoxy of union security has come under attack in Australia. In addition to ideological challenges to union security, Weeks also notes challenges posed by unfair dismissal, and anti-discrimination, laws. In March 1994 amendments to the *Federal Industrial Relations Act* 1988 barred an employer from dismissing an employee for various reasons, including, inter alia, non-membership of a union. Weeks states that '[P]erhaps inadvertently, but quite explicitly, the federal government has disavowed the traditional policy of tolerance of compulsory unionism' (p 252). Further, anti-discrimination laws enacted in the past twenty years may also undermine schemes for union preference. The Australia Capital Territory, for example, in its *Discrimination Act* 1991 (see s 7) makes it unlawful for a person to be discriminated against on the grounds of non-membership of an association or organisation of employees.

Trade Union Security Law is the first in a series of Monographs on Australian Labour Law to be published by the Federation Press. The hardcover volume is handsomely bound and there are very few production errors. At a recommended retail price of Australian \$45 (paper) it represents good value for money. Further monographs in the series are eagerly awaited.

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Crime and Justice. An Australian Textbook in Criminology.

by KM Hazlehurst (ed), The Law Book Co Ltd, Sydney, 1996, v-xxii, 1-461 pp, index 463-477. Price: soft cover \$75.

The public 'law and order' debate is by no means a new one. Arguments for tougher laws and harsher penalties for various crimes have long commanded a good deal of media attention. Yet it may fairly be said that it is only in relatively recent years in Australia that the debate has achieved particularly prominent status as a major political issue both at the Federal and State levels. In a similar vein, while the interplay between 'law and society' has been the subject of academic interest for centuries, studies focussing on the contextual marriage of 'black letter law' with wider social issues in a broad range of teaching subjects is a fairly recent phenomenon.

Over the past decade or so criminology has significantly expanded as a field of study. Subject offerings in Criminology at both the introductory and advanced levels now have a firm place across a range of disciplines in Australian tertiary institutions. In addition criminological components appear in a huge number of introductory subjects across the social sciences. However as Hazlehurst, the editor of *Crime and Justice*, points out in the preface to this new text, while there are a large number of valuable Australian specialist publications on most aspects of the study of criminology the availability of more general and introductory texts, particularly ones which are Australian-based, is more limited.

Indeed, it is probably fair to say that one of the best-thumbed Australian criminology texts to date has been Duncan Chappell and Paul Wilson's *The Australian Criminal Justice System — The Mid 1990s* (Sydney: Butterworths, 1994). That text is the current version of the original edition first published in 1972 and will continue to be a most valuable resource. Nevertheless, it is a fact that there are very few Australian introductory criminology texts around. For this reason Hazlehurst's thoughtfully compiled selection of seventeen chapters written by locally based academic scholars and professionals from a wide range of backgrounds is a welcome addition to present criminology teaching resources. No doubt this new contribution will be well-received by both teaching staff and students involved in introductory criminology courses offered within law degree programs, justice studies, community legal education programs, policing and correctional programs, social work, sociology and psychology.

Turning to the text itself, Hazlehurst wastes no time in posing the theoretical challenge which the new student must confront by her indication in the preface that while the reader will recognise a good deal of agreement in the (theoretical) assumptions and conclusions of the authors, one of the strengths of the text is the differences, even conflicting, policy prescriptions which also exist within the contributions. Thus the stage is set for the novice student of criminology to recognise the importance of the role of critical analysis. In this vein also, appearing under the sub-heading 'Learning to be a Criminologist', John Braithwaite concludes the opening chapter of the text by posing questions students can ask themselves after reading each chapter; the object of the exercise is that the reader should aim to build the necessary 'conceptual armoury' or understanding of the way different theoretical perspectives may impact upon the way a particular issue is viewed and ultimately transformed into policy prescriptions.

This encouragement to whet the analytical appetites of new recruits to the field is positively reinforced by an aspect of the text's overall format. At the end of each chapter a series of questions is posed to encourage students to reflect upon and extend their reading and particular research interests. In addition, the teacher may find these questions a useful guide for tutorial group discussion topics.

The subject content of the book may be broadly classified into four distinct sections. The first three chapters explore the historical development of criminological thought and

the evolution of different theoretical perspectives. Chapter four provides a basic outline of the different methods of and the inherent difficulties associated with measuring crime as well as briefly tracing the Australian criminal justice experience from arrest to appealing a conviction and/or sentence.

Each of the following five chapters focus on a particular category of criminal activity, including crimes against the person, property offences, juvenile crime and the juvenile justice system. The legal and social policy strategies for dealing with these particular 'species' of crime are discussed, evaluated and the possibilities of alternative approaches are explored.

The bulk of the chapters include relevant and useful empirical data presented in a manner which can be easily understood by students who may have little or no training in the interpretation of statistical data.

The text's structure reflects the fact that at different periods specific forms of criminal behaviour may warrant particular attention, especially those which may have only recently 'come in from the cold' and found themselves on apparently solid ground, that is with the support of both the legislature and firm policy initiatives. For example, a chapter is devoted solely to the issue of domestic violence as opposed to a treatment of the topic being included in the chapter dealing with 'offences against the person'. Given that there are some serious questions surrounding the effectiveness of the present legal response to domestic violence it is appropriate to pinpoint the topic as a distinct issue.

Issues concerning the rights and needs of victims of crime have recently entered the public arena and as Western points out in the chapter 'Crime and Society' this area promises to be one characterised by substantial development in future years. Some attention is also given to this topic in both Mukherjee's chapter 'Measuring Crime' and Hayes treatment of 'Minorities'.

Also included are chapters on 'cyber-crime', corporate and white-collar crime, organised crime and the position of various minority groups both as victims and offenders. The focus of the chapter on minority groups is the prejudicial treatment of certain groups by the criminal justice system. Particular attention is given to the position of Aborigines, persons with intellectual disabilities, the elderly and ethnic groups.

The last section of the text covers the issues of policing, the courts and correctional programs. The final chapter 'Crime Prevention', co-written by the editor and Adam Sutton, critically examines the shift towards crime prevention in Australia and elsewhere. The authors outline various philosophies and techniques of crime prevention and consider the question of the practical difficulties surrounding the effective implementation of crime prevention programs.

No doubt Hazlehurst faced a daunting task in selecting and putting the materials together for this text but the end-product is a thoughtfully compiled, well-structured and very readable introduction to Australian criminology which covers the main issues which represent the current focus of criminology. One particularly topical subject at present, environmental offences, could perhaps have received more expansive treatment within the chapter on corporate crime but this is a very minor criticism indeed in the light of the text's 'leave no stone unturned' extremely good coverage.

By the very nature of its subject matter it is not a text which promulgates clear-cut answers to the vast array of questions it poses; but this is of course the very point which must be faced squarely by students who may eventually enter any one of the number of professions which interface with the criminal justice system in Australia, whether as criminal lawyers, academics, policing personnel or policy-makers.

The book will be useful in a number of disciplines as a general grounding in the central issues of criminology or as a springboard for a closer analysis of any one of the topics

dealt with in the text either as a research topic or as the basis for undertaking advanced studies in criminology.

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