EDITORIAL

Here we are again two months late with the fourth issue of ACJ, marking the successful completion of the first year of publication. It seemed at times over this period that each issue would be the last and certainly that we would not be able to sustain publication after the first year.

Happily it now seems that provided the current subscribers renew their subscriptions then the survival of ACJ is likely at least for another year. We would like to thank all those associated with the journal for their assistance and also thank the various student unions for their recent financial assistance. We urge all subscribers to renew their subscriptions. Judging from the number of comments along the lines "such a publication is long overdue" (particularly from prisoners) it seems we are attempting to fulfil a very definite need for a radical publication in this area tradionally dominated by conservative publications.

The first four issues have covered a range of areas, with the predominant concern being the prison system. While a radical or 'alternative' criminology covers a wide area outside of prisons such a concentration has been the outgrowth of two main factors. Firstly the ACJ itself came into existence and continues largely through the efforts, energies and resources of the NSW Prisoners Action Group. Secondly, in contrast to much academic criminology, even that of an avowedly radical kind, we are concerned with the human reality, the real people caught up in the social control machine. Prisons are one of the most brutal outposts, the hard core of that social control process, and prisoners among the most brutalised of its many victims.

Incidentally, we have also attempted, although the attempt may not have been obvious to some, to avoid the mystifying jargon and general incomprehensibility of many journals of a leftist nature, and many professional journals, and have tried to avoid any sectarian line.

We feel that the attempt to appeal to three audiences: prisoners, radical criminologists/students, and professional 'system' workers, while obviously not completely satisfactorly, has worked well enough to keep this as the basic format for the next year's issues. The policy of continuing to print letters, articles and contributions from prisoners themselves will be continued. Several forceful articles by prisoners are included in this issue. We shall also continue our forthright call for the abolition of prisons, an argument cogently put by Des O'Connor in this issue.

The publication has not been welcomed in some quarters. In particular various attempts have been made to prohibit the journal reaching certain prisoners. As with many aspects of prison life no firm policy has been laid down banning the ACJ, nevertheless it is clear that copies sent to certain prisoners have not been allowed through and others have been confiscated after receipt. We make no apologies for offending the agents of brutal and repressive institutions, no apologies for upsetting judges, administrations, lawyers and indeed anyone who is prepared to defend the existing social economic and political order in Australia as substantially fair and just. We pay tribute to all those both inside prison and out who are fighting the political struggle for a new society. And in particular we extend our admiration to those prisoners and militants who have in the face of vicious reprisals and daily intimidation confronted the full array of the state's coercive powers and in collective action razed the jails.

The specific nature of the Australian penal system and of Australian criminology must obviously be placed in the wider economic social, political and historical context of Australian capitalist society. As the November coup of last year demonstrated, Australian political life is dominated by those who are forever invoking 'the rules', 'law and order', 'democracy' against those who quite correctly assert that real power lies outside parliament at the point of production i.e. in the workplace. At the same time these very rule-makers are also the greatest rule-breakers:- they are prepared (directly against their own long term interests which are clearly to maintain respect for such notions as democracy) to flout their own rules and discard them whenever they think it is necessary. Thus an anachronistic monarchical figurehead can conspiratorially dismiss an elected government commanding majority support in the house of representatives.

Such actions in the short-term consolidate the control of conservative, authoritarian, racist, sexist, and neo-fascist forces in the Australian community. But in the long term such actions may reveal historically the illusory nature of liberal bourgeois democracy, may demystify the real power relations in society and lead eventually to a spread of the sort of consciousness that aims to completely overthrow the corrupt existing order in all its manifestations and institute a system of social and economic relations between people based not on private profit but on notions of equality, the common ownership of the means of production, and the liberation of human potentialities.

Similarly the legal and penal systems in Australia demonstrate in many ways a parallel inability to adhere to official liberal rhetoric. The same flouting of the rules, the same corruption, the cover-ups, the contempt with which the various arms of the state apparatus, the social control agencies in particular, view both their own 'rules' and those they control, is apparent.

In recent weeks in NSW for example, we have seen yet again that even the notion that alleged wrongdoers have the right to a legal trial and to sentencing by the judiciary is somewhat illusory. Phillip Western a convicted bank robber on bail for armed rob charges and wanted on suspicion of murder fell victim to that popular police pastime of execution before trial, thus joining a growing list of people in Australia in recent years denied that fundamental right in the most dramatic way possible.

Perhaps predictably, in view of the understandable sympathy for the bank officer Western is alleged to have shot, media attention immediately focused on the question of why a man of Weston's record was granted bail on such a charge. It is ironic that concerned people can for years call for a review of the law of bail on the grounds that literally thousands of people are being denied bail unjustifiably with catastrophic effects on the outcome of their cases, their employment, their families and a host of other demonstrable injustices, and yet it takes only one case in which the suggestion is that bail should not have been granted to provide the impetus for that long overdue review.

NSW's new Labor Premier, who had earlier made suggestions that he was going to 'clean up' the police, called for an immediate inquiry into the decision to grant bail and called for the files. If Mr. Wran digs deep enough he may well decide that 'cleaning up' the police is going to be a rather formidable task.

Bill Chambliss in a recent criminological work, directed the attention of criminologists toward the idea long accepted by most 'criminals', that the police are essentially the managers, rather than the controllers of crime. Thus the police organise "to manage crime by co-operating with the most criminal groups and enforcing laws against those whose crimes are a minimal threat to

the society." [1]

In the unlikely event that the Western case investigation is thorough enough, it is possible it will provide dramatic support for Chambliss' contention. Mysteriously, it appears that most of the proceeds of Western's alleged robberies are missing and have not been recovered. Over recent years it has been claimed in 'criminal' circles that the proceeds of robberies are frequently liberated from the original robbers by the police, and written off as unrecovered. The armed hold-up squad has been the frequent object of such stories. The pay-off for silence after such seizures is alleged to range from outright protection, the laying of minor charges, the reduction of charges, through to a favourable police attitude to bail applications, rewriting of the fact sheet and so on.

Precisely such allegations were made, in respect of the Randwick bank robbery with which Western was charged, some weeks before Western was executed, indeed even before he was released on bail. If these allegations are true it may go some way toward explaining why Western was less of an embarrassment with three bullets in the head than he could have been had he been captured unarmed and unharmed, as was clearly possible on several occasions during the stake out.

It seems unlikely that Mr. Wran will have either the inclination or the power to do anything very much about police corruption in the state of NSW. If the lid ever were really lifted on such practices it would be quite apparent that the usual 'few bad apples' ploy would be totally inapplicable and the lid would be quickly clamped on again.

The Western case also highlights the role of lawyers as intermediaries, not only in the normal plea bargaining situations but also in direct pay-offs. It has been common knowledge for some time that there are a small group of lawyers who are prepared to deal directly, to organise pay-offs for their clients, particularly where specialist police squads are involved. And of course they secure very good results for their clients. In an honest and controversial article in this issue a Sydney barrister squarely raises these issues and suggests that if defendants and their lawyers are to have a hope of a fair trial against concocted records of interview, verbals etc. then defendants and their lawyers must consider concocting their own evidence and paying off the police, as legitimate counter-tactics. Possibly a lively correspondence may ensue in future issues.

Returning to the theme of the inability of 'the system' and its agents to adhear to liberal legal rhetoric, we see this demonstrated in the contempt for the fate and rights of those classified as 'criminals'. Such contempt is often built into the law itself, or is manifested clearly by those administering the law.

In this issue Julian Disney discusses prisoners voting rights. Here is a clear example of gross discrimination against prisoners, of complete failure to match liberal democratic rhetoric with actual practice. Most prisoners in all states just do not possess the right to vote, they are in effect non-citizens, outlaws. The substantial minority who are entitled by law to exercise the vote are denied this right by the obstruction and disregard of senior prison authorities and electoral officers.

Another dramatic example of the present outlaw status of prisoners in Australia is provided in the recent judgement in the Darcy Dugan defamation case. Dugan had filed six writs for alleged defamation against Mirror Newspapers Ltd. Mr. Justice Yeldham in the NSW Supreme Court upheld the newspaper company's claim that a convicted felon still serving a sentence imposed on him could not sue for damages at law. The full judgement is not yet available but it appears that convicted felons may be unable to bring any civil action while still serving out a sentence, and that this could

include the period after release on parole until the maximum sentence period itself expires. This would appear to cover even the extreme case of the prisoner who is released on parole and then before his parole period has expired is injured by a negligent driver or is injured while at work through the employers' failure to provide a safe system of work.

Such a situation defies comment. As Dugan himself says in a letter "NSW has officially bestowed upon me the title of non-person. The effect, I am an animal. ....It also occurred to me that most of the high and mighty who sit on the Judiciary are fond of quoting the claim that they are proud to be administering British Justice. Makes you laugh, a sour laugh. Are they really proud?".

Indeed it is difficult to see how anyone could be proud of any judicial pronouncement on the subject of prisoners rights in Australia. The judiciary have an abysmal record, their contempt for the rights of prisoners appears to know no bounds. [2] Greg Woods in this issue notes the recent High Court plea bargaining decision in Bruce's case. Whatever the High Court may wish to say or not say about plea bargaining it seems incomprehensible how they could fail to order a retrial, particularly in the light of the leading English decision of R. v. Turner [3] in which a retrial was ordered.

This contemptuous attitude toward the legal claims of prisoners was demonstrated clearly in the recent unreported case of R. v. Hass, which will be discussed in more detail in the next issue. Hass, a prisoner, was seeking leave to attend court and appear for himself in person on an application for special leave to appeal from a decision of the NSW Court of Criminal Appeal. In discussing the application Barwick C.J. stated "he has not got a right to be here, he has a right to appear personally. That is to say if he is here - assuming he is a party - then his right begins when he is here". [4] When it was pointed out politely that the effect of such reasoning would be to effectively deny that right of appearance to anyone in custody and thus unable to "be here", this was dismissed on the analogy that he could be "in Iceland" or "outback of Bourke". McTiernan J. clearly voiced his concern over the possibility of allowing prisoners to appear before the High Court: "Suppose he does come here and is noisy and wants to talk and misbehaves himself". [5] Little comment is needed, such expressions of 'learned' legal opinion from the highest 'most venerable' court in the land speaks for themselves.

In the face of such arbitrary, blind, contemptuous, class justice it is interesting to reflect on the George Davis campaign in Britain, noted by Tom Fawthrop in this issue. The campaign of direct action by Davis's friends and local community, and in particular the digging up of the test match cricket pitch was successful in securing what all manner of legal appeals had been unable to secure, the release of an innocent man. It will be intriguing to see if the important victory won by direct action tactics in the Davis case will be taken up by activists in Australia, at least in partial substitution for lengthy, expensive, and often deadend recourse to moribund class justice.

On the other hand, in certain specific areas, it may be that we have to look for an extention in the use of lawyers and legal methods. Rob Woellner in a major article in this issue discusses the way in which massive incursions are daily made into the personal liberties of citizens by the medical and social work professions under acts such as the Inebriates Act, and examines the medico-legal conflict involved.

In addition a radical Australian criminology must keep tabs on the official institutions of crime control or mainstream criminology, subject their activities to scrutiny and analysis and expose their complicity in the generation of increasingly repressive measures, both nationally and internationally Here too their obfuscating liberal rhetoric must be stripped away. For example

it was revealed under cross-examination by PAC Legal representatives at the NSW Royal Commission into prisons that Professor Shatwell of Sydney University's school of criminology, was one of the chief consultants and advisors in the decision to build Katingal maximum security tomb-prison. This same man recently at an Anzaasconference opened his paper by saying that there was too much criticism of the police these days! Such lackeys should be exposed once and for all, and their complicity in monstrous crimes like Katingal, noted for future reference.

In the next issue Gill Boehringer focuses the spotlight on William Clifford, Director the Australian Institute of Criminology, and details Clifford's complicity in the propagation of a repressive criminology throughout the third world. There is also a report on the recent Institute conference on penal philosophies in the 1970's, containing suggestions for activists thinking of attending such conferences.

CONCLUSION

There is no doubt that the publication of the ACJ has materially assisted the development both of the prison movement and the movement for a radical criminology in Australia. We hope to continue and extend those developments over the next year. For a number of reasons there has been a definite limit to the speed and to the theoretical rigour with which those developments have been able to be pursued.

It could probably be said quite fairly that radical criminology in Australia is still operating on an over-romanticised view of criminal behaviour which, as Dale Todd pointed out in the last editorial, has stemmed from our concern to emphasize the political nature of the criminal law and the criminal justice system. Hopefully over the next year we can move beyond such over-romanticisation and fashion a radical criminology that attempts to distinguish between crimes which in fact challenge the social order, which present some (albeit primitive) challenge to the capitalist ethic, and crimes which merely mimic that ethic, which derive from the brutalizations of capitalist social relations. A radical criminology must be able, as Lukacs says, "to slough off both thecretinism of legality and the romanticism of illegality".[6] That is 'criminal' actions must not be judged according to their legality or illegality, for as we have already demonstrated, classifications of legality are decided upon by political power, are created by the ruling class as a means of maintaining and consolidating their rule over less powerful groups.

As I have attempted to draw out in this editorial "radical criminological strategy is not to argue for legality and the rule of law, but it is to show up the law in its true colour, as the instrument of a ruling class, and tactically to demonstrate that the state will break its own laws, that its legitimacy is a sham, and that the rule-makers are also the greatest rule-breakers. The law may be used where there are advantages in so doing, without succumbing to the notion that the law can universally be so useful". 7

David Brown.

1 W. J. Chambliss. The Political economy of crime: a comparative study of Nigeria and the USA in Taylor Walton and Young (eds) Critical Criminology. Routledge . Kegan Paul 1975 p. 177

2 See especially Vezitis v. McGreechan 1974 NSWLR 718 per Taylor J.
Kennedy v. McGreechan unreported. Noted in Current Law 1974 DT 128.

3 R. v. Turner (1970) 2 AllER 281

4 Transcript p. 15

5 Transcript p. 18

6 Lukacs. History and Class Consciousness p. 270.

7 Jock Young. Working-class criminology. In Taylor Walton and Young. Critical Criminology (supra) p.89.