

My unwillingness to join in this conception of Marcic is largely due to the consideration that its adoption would require a major reorientation and reconstruction of existing prevalent patterns of legal thought and reasoning on all levels, which is hard to accomplish in view of the prevailing inertia of juristic thought. Moreover, I think that the legal positivist conceptions favoured by professional lawyers and by what seems to be the majority of academic lawyers, at least in English speaking countries, are capable of refinement which would make their ethical and practical import indistinguishable from that of iusnaturalist conceptions. Reading the present thought-provoking and thought-alimenting book of René Marcic, I could not help feeling that the crisis in which our legal and political thought finds itself today due to multifarious factors of modern life may not be capable of resolution without resolute rethinking and reorganisation of the very foundations of legal and political thought along the lines drawn by the author of the present book. The signs of disintegration of our political and legal institutions are so unmistakable and so menacing that, before we can confidently demand respect for "law and order", we must be able to present both ideas in such a manner that no doubt is left that they are indeed deserving of respect.

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Puzzled Patriots: The Story of the Australia First Movement, by Bruce Muirden. Melbourne University Press, 1968, XV and 200 pp. (\$6.75).

"WANTED 500,000 young Australians, must be physically fit, perfect in wind and limb for use in Europe as soil fertilizers. Apply, stating nitrate content of body, to No. 10 Downing Street, England."

This advertisement which appeared in the first issue of a Sydney journal, *The Publicist*, in 1936 might be regarded as no more than fair comment on the large Australian casualty figures in World War I. But in 1942 this and similar writings were seen as evidence of dangerous disaffection and helped to earn their author some three and a half years behind barbed wire. For in March 1942 it appeared that Australia faced the threat of a Japanese invasion. And on the night of 9-10 March, sixteen Australian-born men were interned in Sydney because it was believed that they would aid the Japanese invaders. Most of these men were members of the Australia First Movement led by Percy Reginald Stephensen, the author of the above advertisement.

Stephensen died almost penniless in 1965 collapsing dramatically after having delivered a literary address in Sydney. He was a flamboyant, turbulent, protean character who dominates this book about the Australia First Movement just as he dominated the Movement itself. In his student days Stephensen was a far Left radical. One of the first members of the Australian Communist Party, he was the subject of a leader in *The Times* in 1926, accusing him of being "palpably dishonest" in accepting a Rhodes scholarship for a "career of Communist organization". At this time Lord Birkenhead, the Secretary of State for India, attempted unsuccessfully to have him expelled from Oxford University for distributing Ghandian anti-imperialist leaflets to Indian students.

On leaving Oxford Stephensen engaged in a number of publishing ventures, including the publication of the first English edition to be printed in England of D. H. Lawrence's *Lady Chatterley's Lover*. But publishing proved

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unprofitable, and he had descended to editing a greyhound racing paper before he finally quit Britain in 1932. Back in Australia he engaged in more unsuccessful publishing activity until in 1935 he met William John Miles, a wealthy, eccentric, anti-semitic, anglophobe, 65 year old, Sydney businessman, who hired him at a generous salary as his "literary assistant". Miles wanted Stephensen, who had recently proclaimed "Australia First as the only constructive national idea", to aid in launching and editing a new monthly journal, *The Publicist*, which subsequently ran for five and a half years from 1936 to 1942. *The Publicist*, with "Australia First" as its masthead slogan, was a raucously chauvinistic, aggressively anti-semitic, pro-German, pro-Japanese organ. Stephensen's attitude to political and social questions appeared to have undergone a curious metamorphosis. Miles died in January 1942 and *The Publicist* only survived him by two months. But the Australia First Movement initiated by Stephensen in October 1941 was imbued with the same philosophy. Like *The Publicist*, it ended in March 1942 with the internment of Stephensen and other members of the Movement.

What sort of man was Stephensen? D. H. Lawrence thought him "a bit of a windbag" with "unreasonable antipathies". Jack Lindsay spoke of his "unfailing panache" and "breezy magnificence of manner". Manning Clark saw him as "a very angry man, driven by a Dionysian-like frenzy and yet a member of a great tradition". Bruce Muirden says that at the end of his life Stephensen showed himself "as willing as ever to bait Jews or gibe at English accents". But he adds that "the man retained to the last a compelling personal charm and rarely gave lasting offence". One suspects that it was a charm to which Jews with English accents might not have succumbed too readily. Nevertheless, even those to whom Stephensen seems a totally unappealing figure may find the story of his treatment, and that of his colleagues, by the authorities who interned them, disquieting.

C. E. W. Bean, the World War I historian, wrote "I cannot imagine the Australia First Movement . . . ever constituted any great threat to our safety". And in the light of Mr. Muirden's account of the Movement with its minute membership, the verdict of Eric Harrison, the deputy Leader of the Opposition in Federal Parliament in 1946, seems justified. He spoke of "windbags who had not the means to stop a tram or kill a rabbit". Yet Stephensen suffered just on three and a half years of imprisonment without trial in Australian internment camps. Other members and associates of the Movement were imprisoned for shorter periods, although two of them each served a year and eleven months. And although there were those who felt uneasy about this—notably Arthur Calwell who publicly called for an enquiry into the internments as early as May 1942—on the whole it was accepted complacently both in and out of Parliament. Dr. H. V. Evatt, said to have been "unhappy about the whole affair", nevertheless continued to maintain as late as 1946 that the internment of the "inner core" of the Australia First Movement was justified.

Mr. Muirden's admirable book is offered as a "cautionary tale" for "civil libertarians". But it is more than that. It is a valuable contribution to Australian political history, distinguished by maturity, objectivity and dry wit. The author does not allow his sympathy for the "personal tragedy of the internees" to blind him to their failings. Thus of Stephensen's complaint that his detention was the result of a conspiracy by "certain Jews and Communists" Muirden says ironically, "Exactly which Communists and which Jews he never announced in public". He remarks of one Australia First orator that he operated "with that special licence which apparently allows fervent nationalists to be insultingly outspoken about their fellow-countrymen". His final comment on Australian nationalism at the time is that "if Australians in general had so loose a grip on their nationality that it required frequent and angry

affirmation . . . their cause was indeed lost". And he quotes Sydney composer Malcolm Williamson's remark that "We must be terribly proud to be Australian; but we must also, I think, shut up about it".

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Proceedings of the Institute of Criminology. The University of Sydney, 1967. Government Printer, N.S.W., 1969, 127 pp. (\$4.00).

Report of the Proceedings of the Seminar on Sentencing

The purpose of the Seminar, according to Sir Leslie Herron, was "to promote a greater judicial understanding of the problems of sentencing and to achieve at least some measure of uniformity". Apparently relatively few members of the magistracy and judiciary were present, but the quality of the papers at the Seminar and the obvious wide range of discussion must have promoted greater interdisciplinary understanding.

The Seminar was divided into three sessions. At the first, papers were read by experts from different correctional fields. At the second, hypothetical cases were considered by members of the judiciary and magistracy. The third session was devoted to discussion, which unfortunately was not reported, and concluding addresses which were delivered by Sir Stanley Burbury and Mr. J. C. Maddison, Minister of Justice for New South Wales.

One of the obvious merits of the Seminar was its width. Occasionally depth was sacrificed for width, but this was probably inevitable. Some comments contained in the papers threw new insights on to old problems. Some comments were provocative. Not everyone would share, for instance, Sir Leslie Herron's view that "an examination of the general policy of the Court (of Criminal Appeal) reveals no lack of readiness to experiment with rehabilitative measures where this can be done without exposing the public to undue risk of injury". However, most would accept his opinion that a wider range of objectives in sentencing calls for wider information. Mr. Justice Allen's paper contained some helpful information on the functioning of the Parole Board, and a reassuring admission that, ideally, every applicant for parole should be seen by the Board. Less assuring was his observation that the Board interviews parole officers only occasionally.

Mr. Morony (then Comptroller-General of Prisons) must have refreshed the audience by his concern about the high proportion of fine defaulters amongst the prison population, about the likely failure of prison sentences to deter, and by his admission that neither the very short nor the long sentence can be justified on the grounds of rehabilitation. Some welcome suggestions were made by Mr. Keefe, Principal Probation Officer. He wondered whether pre-sentence reports should be mandatory for some categories of offenders. He considered that offenders in respect of whom a pre-sentence report has been prepared respond better than others to orders for supervision, that most probationers require only two years' supervision or less, that conditions of abstinence from liquor provoke deception between probationer and his officer, and that orders for payment of compensation can be instrumental in rehabilitation. Mr. Hayes' paper, on "The Prison Field Service", was somewhat peripheral to the subject of sentencing. Dr. Barclay, Director of State Psychiatric Services, made a significant contribution by emphasising the problems of treating patients who are "under detention" in mental hospitals

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