# Introduction

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This book should help to fill a gap between two sets of debates. It is one which has existed for a long time, at least in Australia, but which has recently become more apparent. It is the gap between debates about social theory and debates about law.

The organization of the teaching and researching of both social theory and law in Australia has exacerbated this gap. Only in a few higher education institutions has any attempt been made to establish structures which foster an easy integration or even overlap of these two fields.

There are two main reasons why the gap has become more apparent recently. One relates to a development in institutions of teaching and researching social theory, the other to a development in institutions of teaching and researching law.

Social theory has experienced considerable upheaval in the last ten years or so. Whether the teaching and researching of social theory is carried out within established disciplines like history, politics or sociology, or within less rigid spaces, like social and political theory units or schools of humanities, this teaching and researching could hardly have failed to have been affected by a particular challenge to the way its central objects, especially the object society, are understood.

The two approaches which have dominated social theory for most of this century, Marxism and liberalism, have, at the same time as they have continued to challenge one another, both come under challenge form a third approach. The major target of this challenge is the maintenance of general theories, involving general explanations, a feature common to both Marxism and liberalism. The main sources of the challenging approach are the work of Michel Foucault and the work of other writers like Barry Hindess and Paul Hirst. The ap-

proach involves the rejection of general theories and general explanations in favour of more detailed considerations of the specific conditions of the operation of specific objects. For this approach, it doesn't matter whether a general explanation is posed in terms of economic production, as is likely within Marxist approaches, or in terms of the actions and motives of particular individuals, as is likely within liberal approaches. The challenging approach - call it the Foucaultian approach - necessitates the construction of particular objects, like the operation of prisons, hospitals, mental asylums, governments and the knowledges on which they depend, in their specificity, rather than relying on the obviousness of objects like society or class or the state. And instead of seeking a general explanation of an object or objects, the Foucaultian approach seeks only to trace the particular conditions of the object in questions, say the operation of prisons and the various knowledges on which it depends.

This development in the teaching and researching of social theory has led to a greater awareness of the diversity of effects of laws, as particular conditions of particular objects. Whereas laws are seen within most Marxist and liberal approaches as a bloc, which sometimes functions as part of a grander scheme involving society and/or classes and/or the state, within the Foucaultian approach laws are seen as particular conditions, among many conditions, which require the close attention which should be paid to any factor which cannot be assumed to operate and certainly cannot be assumed to operate in the same way in any two places or at any two times.

The development within institutions of the teaching and researching of law which I wish to discuss here is a particularly specific one and a particularly local one. It is the annual Australian Law and Society Conference. To date four such conferences have been held. The conferences have been organized mainly by people involved in teaching and researching law in separate law units or in legal studies units. But these people have encouraged the participation, in all aspects of the Conference, of people involved in the teaching and researching of social theory. This has fostered the sort of integration of law and social theory at the Conference which, as I said earlier, has not occurred to any great extent in higher education institutions. Obviously this is something most of those involved in the Conference are working towards but in the current climate of disciplinization in Australia, it would be foolhardy to be optimistic.

Not surprisingly, the integration of law and social theory at the Conference has focussed on debates around the work of people like Foucault, Hindess and Hirst. Even though not all Conference papers focus directly on this work - in fact only a small minority of papers do - it informs the debate that envelops most papers. Indeed, to the best of my knowledge, it is the only on-going contemporary Australian conference dealing in some way with social theory where Marxist and/or liberal approaches do not dominate Foucaultian approaches.

This book then is largely a product of the Australian Law and Society Conference. Most of the book's contributors have been directly involved in the Conference. All of them have been heavily influenced by it and by the positive intellectual shift it has engendered.

The first essay in the book, Valerie Kerruish's "Epistemology and General Legal Theory" is a sophisticated defence of a general Marxist theory of law and a general Marxist theory of politics. As such, this essay is a more detailed guide to the development in social theory discussed above. Kerruish acknowledges the challenge posed by work like that of Foucault, Hindess and Hirst and sets out her defence in line with this acknowledgement. Brendan Cassidy's "Whose Law, Which Discourse?" exposes some problems associated with unified views of legal processes and personnel. In a similar vein, my essay "Turning the Law into Laws for Political Analysis" argues against the use of the concept of the law on the basis of an argument against the use of the concept of power. These two essays are part of the challenge to Marxism and liberalism and so are in direct contrast to Kerruish's essay.

The next two essays, Graeme Lowe's "Legal Sanctions and Corporate Actors: Intimate Relations or Mere Acquaintances?" and John Frow's "The Subject of Law", explore questions related to the legal subject. Lowe's essay discusses the difficulties associated with examining corporations as particular types of legal subjects, particularly in terms of attempts to regulate them. Frow's essay is a succinct attempt to define the category of the legal subject.

The final three pieces are more specific studies of particular aspects of legal politics. While it is extremely rewarding to read them in the light of the arguments raised in the other essays in the book, they nonetheless stand as three separate studies with self-con-

tained arguments. Ian Hunter, David Saunders and Dugald Williamson, in "Obscenity, Literature and the Law" discuss the shifts which have occurred, particularly between the nineteenth and twentieth centuries, in the ways laws of obscenity have used and effected the category of literature. David Brown's "Some Preconditions for Sentencing and Penal Reform" provides a detailed, wide-ranging examination of many of the difficulties faced by recent attempts, some of which continue, to reform certain legal procedures and the operation of prisons, particular in New South Wales. Russell Hogg also draws most of his material from NSW. His "The Politics of Criminal Investigation" is an insight into the techniques employed by police in investigating crime which allows a thorough consideration of the specific conditions of the politics of much police work.

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