

BOOK REVIEW

AUSTRALIAN CRIMINAL JUSTICE

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Now in its third edition, *Australian Criminal Justice* provides a comprehensive introduction and overview of the fundamental principles, institutions and processes of criminal justice in Australia. Ideal as a text for legal studies and criminal justice courses directed at non-law students, it introduces basic legal concepts and doctrine in substantive criminal law, criminal procedure and evidence and combines this with a detailed examination of the routine functions and processes of the criminal justice system. The authors are also careful to include analysis of relevant bodies of human rights law and principle throughout. The book also has value for law students and legal specialists who are commonly taught about criminal justice in a compartmentalised, rather than a holistic, way: a substantive criminal law course here, an evidence course there, perhaps a smattering of criminal procedure, often nothing on sentencing and punishment and commonly very little by way of an integrated empirical analysis of how the different bodies of law, process and practice inter-relate or fail to.

The book includes separate chapters on investigation, pre-trial, trial, punishment and sentencing. It also has a useful chapter that provides an overview of the 'new' investigative agencies: the Australian Crime Commission, the NSW Independent Commission Against Corruption, the Australian Securities and Investments Commission and the Australian Security and Intelligence Organisation (ASIO). In the long final chapter – 'And Justice for All?' – the predominantly expository style of the book gives way to a more critical analysis of how far in practice Australian criminal justice lives up to the principle and promise of 'equal justice'. This includes sections on juveniles, Aboriginal people, women, intellectually disabled people, corporations and victims of crime, and ends with a schematic overview of recent counter-terrorist legal measures.

Criminal justice scholarship in Australia came a long way in the last quarter of the twentieth century, as Justice Michael Kirby makes clear in his foreword to the book. He recalls that his own law school education in criminal law in the late 1950s was based on an English text and an almost exclusive focus on English cases and

doctrine. This reflected not only the derivative nature of Australian criminal law principle and doctrine, but also a denial that there was anything distinctive to the local context and its history that was worth teaching and knowing. It might have surprised graduates of Sydney Law School in the 1950s (the only law school in NSW until the 1970s) who entered the practice of criminal law to discover that most (ie more than 50%) of the cases prosecuted before the NSW criminal courts at that time were for public drunkenness - not something they would have learned much about in law school. On the other hand, few probably did discover this, as such aspects of the routine working of criminal justice were beneath the threshold of professional, as well as academic, interest. As were the harsh and discriminatory treatment dealt Aboriginal people, the pervasive impact of sex inequalities, the predisposition to pathologise and lock away individuals or groups who offended narrow, middle class notions of physical, mental, moral and sexual 'normality', a child welfare system in which moralising and callous treatment was often masked by benevolent rhetoric, and the near total invisibility of crime victims. Such matters have now become important subjects of public concern, attracting their own specialist legal services and advocacy groups, concerted programmes of legal and social reform and substantial bodies of research activity.

Such advances underpin the continuing interest (reflected in the final chapter of *Australian Criminal Justice*) in judging the performance of the criminal justice system against the standards of equality and fairness it has set itself as a condition of its public legitimacy. In every area into which their scrutiny reaches in this chapter, the authors still find the system seriously lacking. Over something like a 40-year period Aboriginal Australians have made the transition from formal segregation on reserves and missions to police and prison cells in such overwhelming numbers as to inflict collateral economic and social havoc in many of their communities. The closure of large institutions to house abandoned, neglected and abused children, the mentally ill and those with disabilities saw many pushed onto the street, into hostels and other unsupportive situations. The long-term consequence has been that many in these groups are also increasingly finding their way, often by default, into the clutches of the criminal justice system. The criminal justice budget is one area of public expenditure that can be relied upon to expand year after year. Indeed, in most countries the prison system is one part of the public sector that is expanding rather than contracting. In the 1970s prison populations and rates were in long term decline in Australia, but since the 1980s they have everywhere exploded. It prompts the thought that a 'great confinement' might be upon us again, especially when we include consideration of new forms of detention, surveillance and exclusion: everything from immigration detention centres to sophisticated private security systems and 'gated suburbs' to the new global gulags produced by the 'war on terror'.

An ever-expanding criminal justice system not only serves to confine more people; it also confines the way people think about the social problems that beset the contemporary world, blanketing out any regard for deeper causes and remedies and erecting psychological barriers that block sympathy for the plight of the troubled

and troublesome in our midst. Fear becomes a central emotional force driving public policy and private choice, and security the ultimate basis of political legitimacy. This might seem like an appropriate time to affirm some time-honoured normative principles like equal justice, but critical criminal justice scholarship risks missing the boat if it does not also seek some new ways of making sense of our rapidly changing legal landscape. A challenge perhaps for the authors when they come to write the 4th edition of *Australian Criminal Justice*. It would add another valuable dimension to this work.

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