Reviews

Australasian Gay and Lesbian Law Journal

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I have a particularly acute experience of the intersection of gay identity and the law. Having spent several years working in fields where I was permitted the luxury of focusing almost exclusively on gay agendas (first as a cultural studies academic then as a television researcher/producer for the Channel 4 television series 'Out') I decided to return to legal studies and was, a year ago, admitted to practise law. After graduating, I got a job at a prominent city law firm (which, coincidentally, is famous for the gay personalities who have peopled its corporate corridors). Only months after I began work, a book I had edited, *The Good, the Bad and the Gorgeous: Popular Culture's Romance with Lesbianism*, was published. I did a lot of publicity for the book when it was released and, to my undying horror, was overheard on the radio by a senior partner of the law firm while he was driving home.

So, I am gay and I am now a lawyer. I feel amply qualified to review Volume 5 of the *Australasian Gay and Lesbian Law Journal*. Hell, I've even been published in the *Journal* myself.

I am thrilled that there is a publication of this sort available. The *Journal* is an enterprise towards which I feel an enormous amount of goodwill — which perhaps makes me more critical than someone for whom it means less. To me, the *Journal* seems to lack an identity (ironic, for a publication which is precisely about asserting identity). It feels to me as if it is thrashing about, trying to find a focus. Its content is patchy and the various contributions, in this issue at least, ill-matched.

There are individual gems. One of the areas in which I practise is employment and industrial law and I thought the case study of a man who was forced to resign ('constructively dismissed') from his job as a result of being outed at work, was just great. It does not have great literary merit — the subject matter does not lend itself to that. But it is an important case, and one that needed to be reported.

This raises a critical question about the *Journal*, a question which is not addressed in the text itself. Who are its readers? Is this *Journal* written for academic post-modernist theorists? Or is it supposed to be useful for people who happen to do real legal work? No doubt my slip is showing. I do have a bias. What I would like is for the *Journal* to be a kind of lesbian and gay looseleaf service, reporting cases and law-making which impact on the lives of lesbians and gay men.

Unfortunately, the *Journal* is trying too hard to be like other law journals. Far more space is dedicated to those ponderous theoretical treatises by legal academics and 'wannabes' (in this volume of 95 pages two articles are 42 pages and 23 pages, respectively), while the really useful stuff (the six-page case note on sexual harassment) is tucked away, like an afterthought.

I also found it hard to decipher the selection policy exercised by the editorial committee. One article, 'A Legal Remedy for Sexual Injustice', presented the argument that anti-vilification laws should be extended to address 'hate speech' against women. So far so good. I was astounded, however, that what was advocated, in a completely uncritical way, was the suppression of pornography, without even a nodding acknowledgement that it is gay pornography which, more than any other variety, is the subject of state censorship and repression and that it is gay pornography which has historically provided gay men, at least, with publicly available representations of their sexuality. What is this article doing in a gay journal?

Equally curious was the appearance of the article on s.28 of the *Local Government Act 1988* in Britain. Curious, because the Act has now been around for over seven years and tens of articles have already been written on it. So why this, why now?

I realise it's a bit unsporting of me to take such a sneering tone. But the *Journal* feels like a wonderful opportunity missed. The case note on workplace harassment I intend to photocopy and distribute in the firm where I work. But as the *Journal* is, I could never lobby for the firm's library to stock it — not because of its subject matter but because the *Australasian Gay and Lesbian Law Journal* just doesn't connect with the everyday practice of law. Am I the sort of reader the *Journal* is intended to address? Because, for me, it just failed to illuminate.

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Police Informers: Negotiation and Power

by Rod Settle; Federation Press; 1995; 288 pp; $35.00.

> If the system of criminal justice is a social construct then the way to proceed, if we are to change it, is not by imposing some logic on it from above . . . but by dissecting it and deconstructing it from below: to analyse the practices which constitute it as a field of power, their sources, effects and the myriad networks of power and knowledge they enter.

So begins, and ends, Rod Settle's book on police informers. Russell Hogg's dictum, Foucauldian in its conception and phrasing, seems in one way or another to have suffused radical criminology in Australia: this work is no exception.

But of what does Foucauldian criminological analysis consist? Do you begin by adopting Foucault's non-juristic model of power in order to develop a fuller and more complex study of crime? Or do you simply study crime and then at some stage draw the conclusion that Foucault's model of power is the most accurate?

I am not sure: but this book, not entirely successfully, tries to do it both ways. Settle says up-front that his 'research focus' into police informers is 'loosely in line' with Foucault's thought, in preference to a legalistic model of informing. But instead of then being content to show us a deconstructed-from-below policing that we have not seen before, he reaches for a profound climax. Settle says that his real intention is to show that in the context of managing informers, the law may be seen as one amongst many disciplines which are 'consensually-validated definitions of the substantive content, techniques and agents of specific discourses'. This of course is pure

Foucault. The 'Summary of Findings' begins:

> The most salient feature of the data presented in this study is the extent of informal, largely covert, interaction between police and their sources of information. That observation sits awkwardly with traditional assumptions about the role of operational police posited by much legal doctrine.

Yes, but of course: if you opt for a Foucauldian framework at the outset of an empirical analysis (power is informal, covert, interactive), then — unless you are careful — your deepest theoretical insight will be predictable: Foucauldian theory is vindicated by your data. 'Foucault says that Foucault is right.' It is a platitudinous inquiry that detracts from much that is valuable in *Police Informers*; it is as if Settle is trying to reassure *himself* that he has chosen the correct theoretical equipment, as if he would welcome a logic imposed on the criminal justice system from above. I wonder whether Foucault's thought might not be better developed in books which are entirely free from the weight of theoretical argument.

Having said that, Settle's book works extremely well when it is doing no more (and no less) than plain dissecting — cataloguing the quirks, the oddities and the myriad injustices, big and small, that take place in the dimly-lit purgatory between legality and illegality. The book discloses a wealth of first-hand experience with both the police and with police informers ('gigs' to police, 'chocolate frogs' in prison, 'dogs' on the street) obtained largely, it seems, in Melbourne. Settle states with insouciance: 'The bulk of the field work consisted of lengthy unstructured discussions with contacts in the working-class pubs of the inner suburbs over a period of three years.' Nice methodology if you can get it.

Excellent use is made of newspaper reportage. Settle constantly keeps an eye on the public perception of police informing, and succeeds immediately in disposing of the fictional tableau — 'furtive little men whispering to detectives in the back bars of sleazy pubs'. Indeed *Police Informers* is most disturbing to my mind, not when it is detailing, say, the use to which Jason Ryan was put in the brutal circumstances of the Walsh Street investigation, but rather when it analyses the political underpinnings of what Settle calls 'respectable grassing': the informing of Operation Noah, Neighbourhood Watch, or the routine release of information by government and non-government agencies. All of these practices are pernicious, the incremental exploitation of a popular psychosis.

On the other side of the fence, Settle describes brilliantly the paranoia of the criminal community and its constant fear of the dog: the informer as a traumatic but necessary link between police and criminal. As Settle says, the police cultivate informers both to sustain information flows and destabilise criminal networks. The trick is to make sure that the targeted group does not become so riven with suspicion 'that information flows dry up in a pervasive atmosphere of hostility and distrust'. Settle conveys a detailed sense of the sheer inevitability of the indemnified dog; as the printed notes given to candidates at the Victoria Police Detective Training School say: 'The services of criminal informers are complementary to criminal investigation. Your association with them can be either advantageous or disastrous — depending on how you acquit yourself!'

But of course the police do not always acquit themselves. Settle enjoys telling stories (a truly Foucauldian commitment to local detail) — for example, the Kincumber residents who in 1993, found files from Operation Noah campaigns, listing names and addresses of suspected drug dealers, blowing around the local tip. Or Operation Amethyst, mounted in the Northern Territory in 1991, where the police instructed an indemnified informer to broadcast the fact that she was a heavy drug user and then to engage in buying and selling with suspected drug dealers. The police supplied her with quantities of marijuana for sale and for her personal use. No arrests resulted for over a year and it was discovered that the informer had enjoyed a sexual relationship with her police handler and had made a substantial personal profit from her dealing.

And so on. The book is a ruthless catalogue of police stuff-ups: appalling success rates with phone-in campaigns, informers granted indemnity and expensive protection who refuse to give evidence at trial, and the outrageous abuse of informers in cases like that of Operation Raindrop. Of course Settle's writing takes on new resonances when read against the backdrop of the Royal Commission into NSW police, where at the time of writing one informer in particular looks as if he will be responsible for dozens of prosecutions of corrupt police officers. It is difficult in this environment not to conclude that, for all the systemic flaws and contradictions exposed by Settle, the police informer can be fundamentally useful — useful even against the very police who are so supposedly good at training their dogs. We will see.

But Settle's theoretical quandary remains. It may even be that his desire to promote a Foucauldian conception of this sort of police work goes with his obvious affection for the romantic scoundrel who ducks and dives. The outsider can play the system! It is true that by the time the cases get to court, the real pressures and manoeuvres which dominate the world of grassing are well and truly over. At an official level, the apparatus of the state has nothing approaching a coherent policy or body of doctrine when it comes to dealing with police informers. Nevertheless, in the 'bargaining process' between police officer and informer, so frequently is the 'indemnified' informer discarded once used (Settle's own friend Gus Saavedra is deported to certain death in Bolivia), that Settle himself obviously finds it difficult not to forget Foucault. What bargaining? Tell me everything you know, betray what you have left of your friends, reconcile yourself to a life of terror and I may or may not prosecute you. I wonder if it is not more straightforward simply to conclude that the informer inhabits a world which is curiously juridical and pre-modern, where 'negotiation' is really torture, and where power is in fact unilateral, something held firmly by one 'party to an interaction' and imposed — from above — on the other.

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