

who wish to work through a text from introductory principles to a range of conclusions.

At last Oxford University Press have filled the criminal justice teaching and learning void with this latest text. It has all the hallmarks of being the preferred student text in this area for years to come. For a start, the authors make it clear throughout the book that the notion of justice is conjectural and contingent. Indeed, the best a system can do in order to attempt to ensure justice for all, declare the authors, is to put in place mechanisms that attempt to forestall or avoid injustices. Justice cannot be guaranteed by the legal system or proper law enforcement. These systems in fact harbour the potential for great injustice unless care is taken in implementation.

The authors present their material in a manner which is not ideologically driven. Arguments for and against propositions are placed fairly and evenly for the reader to consider. Comparisons from international jurisprudence are made at regular intervals and reform initiatives are discussed in a manner that indicates that they, too, are integral to the legal and social material presented. (I look back with great regret upon the days of my legal training two decades ago when the moment the word 'reform' was mentioned students' minds (including mine) went into slumber mode.) Here, the 'ought' is given equal time with the 'is'.

The book is a combination of the sorts of topics one would expect to be covered (albeit in overview), dealing with criminal law, evidence, criminal procedure, sentencing, police studies and (to a lesser extent) criminology. Of particular note is the way in which the male and Anglo-Saxon nature of the legal system is highlighted at every opportunity. Disdain for the unjust status quo and suggestions for reform are in abundance in the text.

There are some areas which have been neglected. This is not necessarily a criticism, for to include every topic would be to expand the book to too great a length. Recent efforts to include Aboriginal customary law in criminal law and procedure are not addressed. The 'private' policing phenomenon which has been with us for two decades and its consequences for the criminal justice system is ignored. The new (from January 1 1994) juvenile justice system in South Australia that incorporates the New Zealand 'family conference' model has been omitted. The field

of private 'negotiated' justice is a growing area and one that required some discussion. Chapters 7 and 8 (Punishment and Penalty, and Sentencing) cover much the same areas and should have been consolidated.

Style-wise, I would have preferred paragraphs in the text. Assuming that this book is designed to be a student workbook, it is imperative that lecturers do not have to change all of their references each time a new edition is published. Finally, the index should have included the forty pages of footnotes. The information contained therein cannot be unlocked easily without cross-referencing.

Chapter 10 brings together a number of essential criminological themes: the role of victims in the system, gender

bias in the law, indigenous peoples' issues, juveniles, corporate responsibility and the way in which the law often discriminates against those with intellectual disabilities. Each of these topics is dealt with, however, as something of an add-on, almost as an after-thought. My preference would have been to incorporate each of them into the mainstream text.

In summary, however, these criticisms pale in comparison to the wealth of information that is contained in the book. The text is timely and an excellent reader for any class that is studying the criminal justice process. I recommend it highly.

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## Police and Government — Histories of Policing in Australia

*by Mark Finnane; Oxford University Press, Melbourne (1994) \$24.95*

Mark Finnane describes his task in this book as 'to show how policing may be seen as a historically-formed practice of government in a modern society' and to remember and reconstruct the past in order 'to forego the illusion that the present is very much worse or better than the past'. Discussing the history of police organisations in Australia Finnane develops a series of themes, rather than historical narratives, to argue the case for a specific Australian history of policing. He argues that despite increasing police research in Australia a number of difficulties confront attempts to evaluate the impact of policing. These difficulties include:

a tendency to apply the lessons of police research in the United Kingdom or the United States, on the presumption that the organisation of policing in Australia is basically similar; a tendency to argue for particular forms of regulation of police in Australia which fail to take account of the historical circumstances producing the present arrangements; and a fundamental lack of research on the history of legal regulation and, in particular, the history of the criminal justice system.

Finnane divides his book into three sections. The first, 'Police and government — Public Histories', explores the historical organisation of police forces as important state instrumentalities. He examines why Australian forces were consolidated, centralised bureaucra-

cies, rather than local ones, and looks at the influence of uniquely Australian phenomena like the gold rushes, bushranging, and the transportation of convicts. Amongst the topics considered in this section is the ongoing controversy surrounding the relationship between police commissioners and ministers. Finnane looks at a couple of contemporary crises that have led to the resignation of either police ministers or police commissioners and places the events in historical context. He concludes that the relationship is one that is likely to remain contentious and that:

In periods of social conflict, it appears that the ill-defined boundary in Australia between political responsibility for police and operational autonomy generates potentially destructive divisions between ministers and police commissioners.

The chapter titled 'Conflict, Surveillance and Control' is less interesting than the subject matter might suggest. This is a hot topic but the writing here is flat. Jenny Hocking's book *Beyond Terrorism* (Allen & Unwin, Melbourne, 1993) covers similar ground and is far more compelling.

The second section 'Governing by Police — Social Histories', assesses the historical role of police in social life in Australia. In this section Finnane is concerned with understanding the 'differential impacts of policing': in other

words how race, gender, and class influence modes of policing. The chapters in this section look at the over-policing of certain communities and the under-policing of domestic violence and crimes against women. In his chapter 'The Government of Aborigines', Finnane identifies the policing of Aboriginal people as the single most important characteristic that distinguishes Australian police from their English and Irish counterparts. The chapter on this subject is amongst the best in the book. Finnane concludes on this topic that:

In the case of Aborigines, the interaction of legal regulation directed at the control of the poor, the homeless and the disruptive, with the socially marginalised status of indigenous people in Australia worked to the detriment of good policing. Where policing might have worked more consciously towards peace-keeping, in fact police interventions were often the stimulus to confrontation. Police were not neutral agents in these situations but agents of government presiding over dispossession and attempting to reconstruct or eliminate by assimilation the whole Aboriginal population.

The final section of the book, 'Governing the Police — Hidden Histories', looks at indiscipline and corruption amongst police. This section includes an examination of police recruitment and training, rules and discipline, corruption and reform. In the section on recruitment Finnane describes how traditionally policing has been the almost exclusive preserve of Anglo-Celtic men. He maintains, however, that recent affirmative action and the dropping of discriminatory barriers to recruitment, such as height tests, has led to a different composition of recruits. I believe Finnane is wrong in this. Policing is still a male occupation and destined to remain so for the foreseeable future. Around Australia women make up around about only 15 per cent of total police. Police forces have dropped height tests but have introduced other tests, for example, upper body strength tests, that have proved just as successful in keeping women out. Police forces may now include Australians from the established non-Anglo-Celtic ethnic and cultural groups (for example, Greeks and Italians) but endemic racism within the force remains a major barrier to the employment of indigenous and Asian Australians. On the topic of corruption, Finnane concludes that Australia's record of providing a system capable of producing reliable,

competent, and honest officers, and of dealing with crooked police is poor.

Finnane sheds much light on contemporary debates about policing and draws out many historical continuities. He argues, for example, that conventional critiques of the politicisation of policing are historically naive in that 'for much of the twentieth century, the police have sought to influence public policy in quite direct ways'. The reader learns that the scandals surrounding the methods by which police obtain confessions — force and fabrication — have been the subject of comment and inquiry for at least a hundred years and that the corrupt use of prison informers to obtain convictions, documented by the Independent Commission Against Corruption in New South Wales as recently as 1993, mirror exactly the practices described to a commission of inquiry more than a hundred years ago.

Finnane is to be congratulated for bringing a critical perspective to the history of policing. The histories he presents are far from the 'round-of-applause' style of history that assumes that police in general act for the public good. Finnane believes that there is much in the history of Australian police to confirm the importance of police to the interests of the powerful within and without government. Despite this the

histories he writes are largely, although certainly not entirely, 'official histories'. Finnane writes 'of telling silences which denote the use of unregulated violence, including murder, in the nineteenth century dispersal of Aborigines', yet his own failure to give voice to the continuing reality of unregulated police violence that is part of the lived experience of marginalised members of society is an omission of similar consequence.

Finnane has succeeded in the tasks he set himself in writing this book: he has written a specific history of the Australian police and demonstrated that many of the concerns regarding policing today in fact represent historical continuities. He has thus made an important and unique contribution to the literature on policing. Finnane has failed, however, to decry the policing *status quo* as a state of emergency that threatens those citizens most in need of protection. Milan Kundera writes: 'The struggle of people over tyranny is the struggle of memory over forgetting'. There are many abandoned or forgotten histories which await excavation in a history of policing that sets itself the more ambitious task of 'speaking truth to power'.

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## Making Labour Law in Australia: Industrial Relations, Politics and Law

by Laura Bennett; The Law Book Company Limited, Sydney, 1994, 253 pp; \$55.00; softcover.

On any view of the changes introduced by the *Industrial Relations Reform Act 1993* (Cth), 1994 was a very important year for industrial relations and labour law in Australia. This was the year in which the Australian Industrial Relations Commission was given new and improved powers to certify industrial agreements between unions and employers and in which parties to industrial negotiations were given a (somewhat hedged) licence to take industrial action, without interference from the Commission, as long as they were engaged in 'good faith' bargaining. The new-look Commission, now partly constituted by a bargaining division (especially created to promote bargaining and facilitate agreements), has been given the power to certify agreements between employers and employees directly, without the involvement of

a union.<sup>1</sup> The act has even been given new objects.

The Reform Act also created the Industrial Relations Court of Australia with broader jurisdiction than its predecessors, including the jurisdiction to issue writs against members of the Commission and the power to reinstate or compensate workers whose employment has been unlawfully terminated. In support of this legislative reform package, the Commonwealth Government called to aid not only the traditional heads of power, such as the conciliation and arbitration power, but also the corporations power and the external affairs power. The Government has more than simply tinkered with the machinery of industrial relations and labour law. Rather, it has undertaken an overhaul of the very process of settling