

Debt, Seduction and Other Disasters The Birth of Civil Law in Convict New South Wales

by Bruce Kercher; Federation Press, 1996; \$24.95.

Law does not have a tradition of popular writing. One would look in vain for the legal equivalents of Stephen Jay Gould or Richard Dawkins, authors who take seriously the public's hunger for knowledge about science yet who appreciate that while non-specialists can understand difficult concepts they will not have a mastery of arcane terms or the most recent theories or discoveries.

It is the great strength of Kercher's latest book that it can be described as a piece of popular legal history. While it has all the paraphernalia associated with scholarly writing (footnotes and a genuine attempt to deal with previous authors) and can be profitably read by professional historians and legal academics, it reads best as an attempt to expose the legal history of early NSW to non-specialists.

Debt, Seduction and Other Disasters is a history of the first 25 years of law in colonial NSW through the lens provided by court cases. Kercher warns us to be prepared for an unusual legal playground. When it is noted that for most of this period the judges and magistrates had no legal training, that the only lawyers were convicts and that the possession of a copy of Blackstone made one a legal authority, it becomes clear that we are in for some unorthodox law. Add to this a drunken, yet curiously sympathetic, judge-advocate, chronic indebtedness amongst lawyers, judges and litigants, and a pair of stern, English trained judges and the mixture becomes heady indeed.

The merits of this book for the general reader are twofold. First, it is a marvellous introduction to the history of early New South Wales. What better way of entering into the society of the time can there be than reading what people fought about? When one considers the small size of the settlement, under 10,000 people for most of this period, the amount and variety of matters that came before the courts was astounding. Perhaps litigation was so popular because it was the best entertainment around, especially since everyone probably knew the parties involved. Certainly, listening to a con-

vict lawyer, Crossley, arguing Magna Carta before a (presumably) bemused judge-advocate, must have been as entertaining as anything else going in Sydney Town. After one has read this book it would be difficult to forget that on trips from Britain to the colony sailors would sometimes drink the entire load of alcohol shipped in the hold or that everyone, it appears, was up to their neck in debt during the early years of Australia. There are some grand stories in these cases and Kercher tells them well.

Secondly, Kercher achieves the almost unbelievable in devoting over 200 pages to a close analysis of legal doctrine and doing so in a manner which should be comprehensible to any interested layperson. His writing is, in the main, clear and easy to follow and his explanations of the various types of law are lucid. To this reviewer this is the major merit of this book. To write a history of law which is accessible to laypeople and which makes no concessions to a serious analysis of previously uninvestigated legal records is an achievement indeed.

This book was obviously a labour of love. The records used by Kercher were not the neatly presented, clearly articulated, judicial reasons which make up the reports of today. In the main, they are handwritten minutes of cases, often with only the decision noted and reasons missing. Deciphering the handwriting alone must have been a mammoth undertaking. Yet from what was basically an unmined treasure trove Kercher has put together a clear and comprehensive study of the law applied in the courts of NSW from 1788 to 1814.

Is Kercher the Stephen Jay Gould of the law world? Sadly, no. In some ways *Debt, Seduction and Other Disasters* is a very good book but it has its flaws and some of them are serious. In this book, as in his other recent work of Australian legal history, Kercher too often tends to a simplistic, good guys/bad guys view of history. Similarly, his treatment of other writers, while always fair doesn't always display the depth of analysis

required. An example may convey this reviewer's concerns.

One of Kercher's main themes is what he calls the growth of an indigenous jurisprudence, which was often at odds with the official, British law. He is quite convincing in his discussion of this theme. But one would have liked him to address seriously Pocock's idea of British history. Pocock, who Kercher has read, argues that during the time covered in this book it is appropriate to talk of a broad British history, covering the separate nations of the British isles, the colonies in North America and, the recently settled NSW. There was an overarching unity in this history as well as a vigorous and interacting series of particular histories within it. If Pocock is correct, this raises several important questions which Kercher fails to respond to in any depth. Was the indigenous jurisprudence that he identifies one variation of a general British jurisprudence, genuinely different but still only a variation on a general theme? Was there any real difference in the things that mattered? Was the indigenous jurisprudence on a trajectory of independence from British law or was it tolerated because it was not a threat to British law? Answers to these and other questions would have added a richness to his analysis.

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How Many Cheers for Engineers?

edited by Michael Coper and George Williams; The Federation Press, 1997; 159 pp; \$40.00, soft-cover.

What with the discovery of Tony Blackshield's wonderful facility for composing comic songs and the enjoyment of the relentless hospitality of the affable Michael Coper and his co-convenors, it was a great conference. I should know. I was there at ANU in August 1995, and my question to members of the panel on 'Has *Engineers* reached its "use by" date?', like the questions of many of the conference goers, is published here (with only the odd mistranscription), together with the papers of the scheduled speakers. And the conviviality was