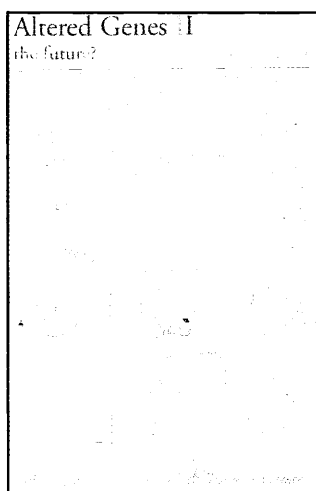


Reviews

***Altered Genes II: The Future?* by Richard Hindmarsh & Geoffrey Lawrence (eds), Scribe Publications Melbourne, 2001; pp260.**



Altered Genes II presents a suite of 12 essays by Australian and New Zealand specialists and an introduction by David Suzuki. This diverse collection includes essays on the privacy aspects of genetic testing, media portrayals of the 'gene of the week', and on the new eugenics. However, the centre of grav-

ity rests on genetically modified organisms (GMOs) and the 'bio-utopia' promised by the agri-food business, bio-pharmaceutical companies and endorsed through the official reassurance provided by government regulators.

In their introduction, the editors state their belief that, with the first wave of gene technologies and products now entering the marketplace, there is an urgent need to stimulate open and informed community participation in order to make appropriate decisions. Their stance is that while the 'promise of biotechnology has certainly been presented to the public, the broader issues and potential costs remain under-presented'.

Some of the most interesting essays focus on the processes by which the implications of new genetic technology are being debated and regulation negotiated. For Richard Hindmarsh, the promoters of biotechnology reflect an elite 'business-as-usual' top-down technocratic approach aimed at ensuring unhampered progress for genetic engineering. In his view, in-house regulatory control, biased public education and

awareness programs, and contained public debate are central avenues for 'manufacturing consent' for the proposed bio-utopia.

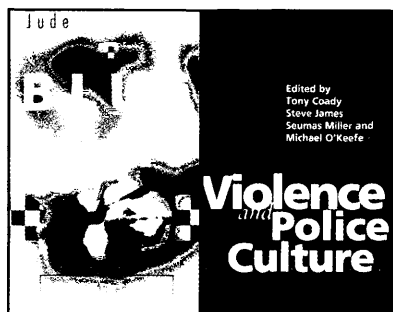
A key mechanism in this process is the deep-seated belief in the scientific community that that the public is too inexpert and alarmist to participate in decision making processes, as opposed to supposedly neutral and apolitical scientists and technocrats — despite scientists being increasingly co-opted to industry research and development interests. Much is at stake for science, technology and industry. As examined by Stephen Crook, there are cultural reasons for the broader public to approach biotechnology as inherently risky, so that no amount of expert reassurance or regulation of risk will be perceived as producing safety.

In this context, the provoking essay by theoretical biologist and physicist Peter Wills may give pause to the most confident molecular biologist. He examines how the linear model of genetic information processing enshrined in the central dogma 'DNA makes RNA makes protein' is increasingly recognised as dangerously inadequate. This is illustrated in part by reference to the reproduction of prions, the rogue proteins responsible for the nightmare of Bovine Spongiform Encephalopathy (BSE or 'mad cow disease') and variant Creutzfeldt-Jakob Disease (vCJD) in Britain and Europe. The emergent properties of genetic processes may make it completely impossible to determine in advance what the ultimate consequences of even apparently minor genetic change are going to be.

This collection of essays is a rich source of critical thinking about the advancement of gene technology and the interests aligned with it. It is to be hoped that the writers will each continue to contribute to the development of an increasingly informed public debate about the future of gene technology that recognises the policy truism that science is too important to be left to the scientists.

– Bruce Alston

Blue Army: Paramilitary Policing In Australia by **Jude McCulloch**, Melbourne University Press, Melbourne; pp289; **Violence and Police Culture** by **Tony Coady, Steve James, Seumas Miller and Michael O'Keefe**, Melbourne University Press, Melbourne, pp326.



Jude McCulloch, a Victorian academic and community lawyer, has often written on law enforcement and, in particular, policing. Her book *Blue Army*

argues that the establishment of specialist counter-terrorist units within state police forces in the mid-1970s has led to an increasing 'militarisation' of policing. These units are paramilitary in structure, training and culture. They train with the military, engender an ethos of action and aggression, include former members of the military, and use military equipment and weapons. These units have increasingly been used in normal policing operations that have little or nothing to do with anti-terrorism. Moreover the units are considered as elites by other police and can form 'macho-action' role models for all police officers.

McCulloch illustrates this argument with particular focus on Victoria's Special Operations Group (SOG). She argues that many of the problematic policing incidents in Victoria including shootings, forced entry raids, mass strip searches and excessive force at demonstrations are directly linked to the SOG or its influence over operational tactics. For example, she argues that the SOG's approach is to shoot first and survive armed confrontations rather avoiding confrontations where possible. She claims the SOG influence has spread almost entirely in secret with little public debate.

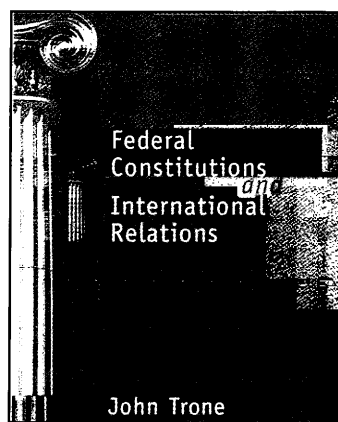
A number of Australian academics have edited *Violence and Police Culture*, which contains 11 chapters from different authors. This book has similar themes

to *Blue Army* but has a broader focus. Violence and policing are almost inextricably linked, with police given state-sanctioned use of non-negotiable coercive force. A major element of the book is examining the extent, causes and pervasiveness of unwarranted police violence. Individual chapters consider the origins of Australian policing, police accounts of their use of violence, the impact of organisational structure, the development of police culture including group loyalty and 'noble cause' violence, regulating police violence, civil and criminal remedies, and moral justifications for using force.

Both books are well written, easy to read and with a good mix of theory and practical examples. Neither claims to be the last word on the topic and instead both aim to encourage further discourse. The contemporary and future relevance of the issues raised have been recently brought home by developments in globalisation and related protests, and with the worldwide concern with terrorism.

– Michael Barnett

Federal Constitutions and International Relations by **John Trone**, University of Queensland Press, St Lucia, 2001; pp164.



This short book focuses on the powers of the national governments of federal states to give effect to international treaties in domestic law. It compares the constitutional law on foreign relations in eight federal states — Australia, the

United States, Canada, Germany, Switzerland, Austria, India and Malaysia.

The thesis of the book is that a 'fragmentation' of treaty decision making and implementation in most federal states is *not* 'part and parcel of a federal system', rebutting the contrary claim by former Australian High Court Justice Daryl Dawson. The author

finds that a unified power of treaty implementation is the most common model in the federal jurisdictions studied. The major exception is Canada, where the fragmentation of treaty decision making is widely considered to have inhibited Canadian foreign relations.

Each chapter is devoted to tracing different legal principles relevant to treaty decision making in federal states. The author begins with the 'most fundamental' rule of international law — *pacta sunt servanda* (treaties are to be obeyed) — an elementary principle of good faith that is seemingly adrift in contemporary Australia, at least in the realm of human rights treaties.

Chapter 2 notes that constitutional limitations do not justify failures to fulfil treaty obligations, notwithstanding 'federal clauses'. Chapter 3 suggests that the framers of most federal constitutions sought to avoid the fragmentation of treaty decision making, although Australia is an exception. Chapter 4 finds that in all federal systems, national governments consult with subnational governments on entering into treaty obligations. Chapter 5 outlines the two principal methods of giving effect to treaties in domestic law: direct application and legislative incorporation, and discusses national variations of each of these methods.

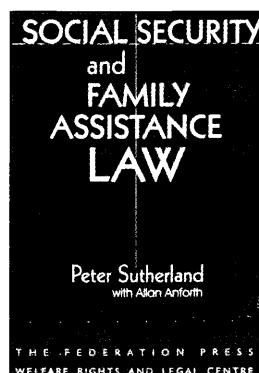
The final chapters address limitations on constitutional treaty powers in federal states. Constitutional guarantees of individual rights are said to be the most important limitation on treaty making and implementation powers, though national courts are reluctant to find treaties or their domestic implementing law unconstitutional. In Australia, however, the author argues that a major restriction on federal treaty power has been the courts' requirement that implementing legislation must conform to the treaty.

The book is written in a lucid, straightforward style, although punctuated occasionally by clumsy expression and convoluted sentence structure. These stylistic problems are partly due to the unavoidable technicality of the subject matter, but the book would have benefited from closer editing. The text itself is brief, given that, on average, half of each page comprises footnotes. The density of footnoting makes the book a useful reference source, although it also disrupts the flow of the author's argument and makes the pages cluttered and difficult to read.

The strength of the book is that it makes a valuable contribution to comparative legal analysis of treaty making powers in federal states. The breadth of jurisdictions covered provides for instructive comparisons and enables lessons to be drawn about the advantages and limitations of different federal constitutional structures and treaty powers. The chapters logically explain the legal principles relevant to treaty powers in federal states and how they fit into the framework of international law. The book is more descriptive than analytical, drawing together existing scholarship from different jurisdictions rather than developing legal theory. Yet as former Australian High Court Chief Justice Gerard Brennan notes in his Foreword, understanding the interaction between domestic and international law has become increasingly important in an era of legal globalisation.

– Ben Saul

***Social Security and Family Assistance Law* by Peter Sutherland, with Alan Anforth, The Federation Press and Welfare Rights and Legal Centre, Sydney, 2001; pp 1008.**



The arrival of this book is timely for a number of reasons.

First, there is currently great public debate on Australia's welfare system as administered under the new social security law.¹

Second, anybody who has ever had to wade through welfare legislation knows that a text on the new social security and family assistance law, with a good index and informative commentary, is long overdue.

Third, the book arrived on my desk moments before I was due to start writing on notification requirements and review mechanisms under social security law as part of the Australian Law Reform Commission's current reference on civil and administrative penalties. A quick flick through the index directed me to vari-

ous comprehensive annotations, which referred to decisions of the Administrative Appeals Tribunal (AAT), the Federal Court and High Court. There were also useful cross-references to other relevant commentary. Without a doubt, *Social Security and Family Assistance* made the task a lot quicker and easier.

This new book, a direct successor of the *Annotations to the Social Security Act 1991* book series, annotates the new *Social Security Law* and *Family Assistance Law* of Australia, as amended to 1 May 2001. The text follows the new structure of the social security legislation (implemented in March and July 2000) and includes the following:

- annotations to the *Social Security Act 1991* that cover: pensions, benefits and allowances; benefits and concessions other than payments; the student financial supplement scheme; general provisions relating to payability and rates; international agreements and portability; and overpayments and debt recovery;
- commentary on the *Social Security (Administration) Act 1999* that includes: general administration matters; the provision of benefits; review of decisions; information management and offences;
- annotations to the *Social Security (International Agreements) Act 1999* that deals with international social security agreements and the calculation of international agreement portability rates;
- writing on the *A New Tax System (Family Assistance) Act 1999* which considered eligibility for, and the rate of, family assistance;
- annotations on the *A New Tax System (Family Assistance) (Administration) Act 1999* that focuses on: payment of family assistance; overpayments and debt recovery; review of decisions; provisions relating to information; the liability of corporations, employers and principals for offences; approval of child care services and registered carers; and obligations of, and advances to, approved child care services and other matters; and
- schedules 5 and 6 of the *A New Tax System (Family Assistance and Related Measures) Act 2000*.

The annotations are clearly set out, current and of a high quality. Commentary is provided on well-known areas of social security law as well as areas that are

becoming more complex and controversial, such as assets and income testing, and debt recovery and waiver. The publishers also note that *Social Security and Family Assistance* includes early cases on new provisions of the Acts such as the Child Disability Assessment Tool, the Job Network and the youth allowance actual means test.

The book annotates both substantive and procedural provisions. For example, the section on review discusses the procedures involved in internal review mechanisms through to High Court appeals. This commentary also features detail on specific procedural matters such as extensions of time applications in the AAT and costs certificates under the *Federal Proceeding (Costs) Act 1981*.

Another notable feature of the text is the inclusion of decisions under repealed provisions of the 1991 Act. This is particularly useful. Advocates will often have to resort to repealed provisions in, for example, debt cases where an alleged failure to declare certain circumstances in 1995 triggers a preclusion period and debt recovery in 2001. The detailed amendment histories in the appendices to the book are also helpful and include amendments contained in both operative legislation and proposed bills.

The index is substantial and operates as an effective guide around the large amount of commentary. There is also a comprehensive table of cases and table of statutes for people who already know what they're looking for.

I should also note the size of the publication. It is amazing how much you can fit into single volume! This is significant because it not only assures mobility (you can actually carry it to the court or tribunal without overloading the trolley) but also affordability (I've never met a millionaire advocate in the social security jurisdiction).

– Jonathan Dobinson

Endnotes

1. See, for example, the National Welfare Rights Network and ACOSS joint research paper *Doling out Punishment — The Rise and Rise of Social Security Penalties* ACOSS INFO 220, 9 November 2000.