

Reviews

Cyber Criminals on Trial

The history of the treatment of cyber criminals in the English-speaking world begins in 'Cyber Criminals on Trial' with a 1972 case, in which a young American was charged with adapting a children's toy whistle to produce a certain telephone tone and thus obtain free telephone calls from San Jose to Sydney to listen to the Australian Top Ten.

Since then, cyber crimes have become more sophisticated and wider in scope, with more serious effects. Computers and networks have vastly increased the frequency of cross-border offences. The Internet has proved to be fertile ground for a new field of crime to develop—from hacking, to engaging in child pornography, copyright stealing, spreading viruses, or finding new ways to separate people from their money.

The focus of this scholarly work is on the way the judicial processes have responded to cyber crimes, rather than as many other works have, on their prevention. These well-qualified Australian authors begin by defining 'cyber crime' and then analyse the issues involved in the capture, possible extradition, prosecution, sentencing and incarceration of the cyber criminal. They also anticipate how prosecutors will try to bring criminals to the courts in future, by identifying and analysing trends in practices of prosecution, trial and sentencing.

Cyber crime poses new challenges for prosecutors in determining location and jurisdiction and in assessing the options for foreign prosecution or extradition. There have been moves towards international harmonisation (and national harmonisation within federal states), for example through the development of model criminal codes such as the Council of Europe's *Convention on Cybercrime*.

Then there are the other special issues often involved in cyber crime, such as the ease with which young offenders can feature; the growth of child abuse and pornography via computer; the admissibility of evidence when it is of great volume or when it is encrypted; the frequent difficulty of identifying offenders; the nature of intent; and keeping pace with Internet developments.

As prosecutors keep up with these hurdles, the defences are evolving too—among them, the 'it wasn't me' defence, the 'it was all research' defence, and the 'fantasy defence', whereby the defendant says 'I didn't intend to go through with it, I was just dreaming about it'.

Sentencing statistics are analysed, showing that sentences handed down for crimes involving computers have no difference in approach than those given for more conventional crimes. However, the authors stress that sentencing policies for cyber crimes continue to develop, and cyber crime is still seen as a novel phenomenon. Appendix B lists legislation and penalties in different jurisdictions.

My favourite part, though, is Appendix A, which is comprised of case notes on 164 cases from many different countries that have been decided since that 'toy whistle case' in 1972.

Cyber Criminals on Trial includes a very good index and, it has to be said, has a strikingly beautiful jacket cover. This well-researched book will be most useful to legal professionals involved with cyber crime, but it has something for anyone curious about the treatment of cyber crime, both historically and towards the future.

△ Carolyn Kearney

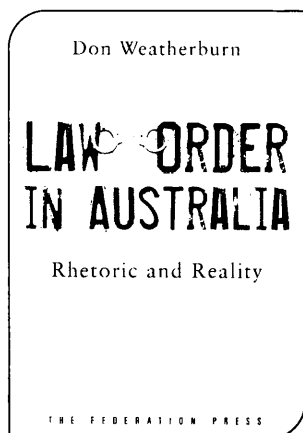
russell g. smith · peter grabosky · gregor urbas

CYBER CRIMINALS ON TRIAL

Cyber Criminals on Trial

By Russell G Smith,
Peter Grabosky
and Gregor Urbas,
Cambridge University
Press, August 2004
pp 262

\$79.95



**Law and Order in
Australia: Rhetoric
and Reality**

By Don Weatherburn,
The Federation Press,
Nov 2004; pp 256

\$37.95

**Law and Order in Australia:
Rhetoric and Reality**

Despite becoming a perennial feature of elections in Australia, the standard of public discourse on law and order remains low. 'Law and Order in Australia: Rhetoric and Reality' sets a new standard for the debate about crime prevention and control.

This book adopts an evidence-based approach to issues such as the size of Australia's crime problem, the causes of crime, the quality of our response to crime, and strategies to improve our capacity to prevent and control crime. People who are bound to a particular position on these issues will be disappointed—the author provides a balanced view in relation to each of these issues.

Dr Don Weatherburn does not argue that evidence-based policies are infallible. He acknowledges that the main sources of data on crime have different strengths and weaknesses. However, he does make a strong case for policy makers to develop crime prevention and control policies based on evidence rather than populist demands or intuition.

The author starts by assessing public perceptions that there is a rise in crime in Australia. The news about crime in Australia is both good and bad. While nowhere near as bad as talkback radio would have you believe, Australia's crime problem is, nonetheless, quite serious.

The author then turns to the rationality of our governments' response to crime. Weatherburn outlines examples of rational and irrational law and order policies in Australia; and offers five defining features of a rational approach to crime control: measurement and monitoring, open access to crime and justice information, evidence-based policy development, rigorous evaluation, and a flexible and eclectic approach to control.

The book also considers the causes of crime. The author notes that crime control is very difficult because some of the factors that influence crime are completely beyond the control and influence of government. He argues that police, the criminal justice system, business, health authorities, welfare authorities, schools and employment and training authorities all have a role to play in crime prevention and control.

Of particular interest is the discussion of the role of the criminal justice system. Despite courts imposing a wide range of penalties, most studies have concentrated on the deterrent effects of prison. There is little doubt that imprisoning serious and persistent offenders protects the community from crime. An increase in the general rate of imprisonment would, at least in theory, be expected to further reduce crime. However, the available evidence suggests that achieving a modest reduction in crime would require a very substantial increase in both the rate of imprisonment and expenditure on prisons. Whether imprisonment is the most cost-effective response to crime is, therefore, open to doubt.

This section also examines whether changes in sentencing law influence judicial or criminal behaviour; whether offenders can be rehabilitated; the value of diversion into treatment; and the effectiveness of community supervision. Weatherburn concludes this discussion with a cautionary note on the overuse of the criminal justice system in relation to Indigenous populations in Australia.

This book is an excellent example of policy analysis and is the perfect introduction to issues related to crime prevention and crime control. It is intellectually rigorous and yet very accessible, making it a 'must read' for those responsible for crime prevention policy, the general public, radio shock jocks and politicians.

△ Jonathan Dobinson

Five Things to Know About the Australian Constitution

The Australian Constitution is not a particularly accessible document. The chapter headings seem sensible enough. They include 'The Parliament' (Chapter 1), 'The Executive Government' (Chapter 2), 'The Judicature' (Chapter 3), and 'The States' (Chapter 5). But the text sitting below these headings is often difficult to understand and the document as a whole can be quite perplexing. Helen Irving, Associate Professor in Law at Sydney University, has tackled the Constitution on behalf of the vast majority of Australians who do not aspire to be experts in constitutional law.

Five Things to Know about the Australian Constitution explains in a straightforward way what the *Constitution* is, how it came to be written, why it says some of the things it says and why it doesn't say others. The language is clear and the narrative is engaging. This is no small achievement given the subject matter, which can be dry and has a tendency to give rise to complex analysis.

Five Things is not a standard constitutional law textbook. The contents page will not lead you directly to information on the external affairs power, referendums or the republic debate although all these subjects are touched on in the text. Instead, Dr Irving has arranged her book thematically: 'The Constitution does not mean what it says' (Chapter 1); 'The Constitution does not say what it means' (Chapter 2); 'The Constitution says certain things that contradict each other' (Chapter 5) and so on. She draws on a range of textual, historical and political examples to illustrate her themes and in doing so grazes liberally across the constitutional landscape.

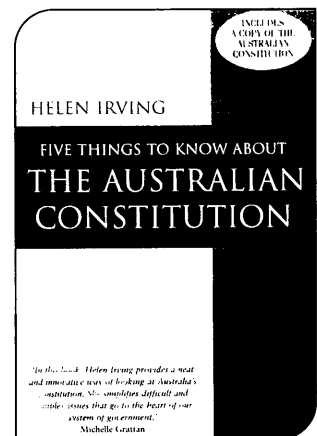
The book examines the constitutional framework and implications of a number of contemporary events such as the 'children overboard' incident in 2001 and the resignation of Dr Peter Hollingworth from the position of Governor-General in 2003. This approach makes the book both interesting and readable—interesting, because it revisits high profile legal and political events, examining them from a constitutional perspective, and readable because it begins with the facts of the case rather than the text of the *Constitution*.

It is not a long book and almost a quarter comprises the text of the *Constitution*. This is

an important inclusion, however, for a non-expert audience who may not be able to easily access the text from other sources.

Unfortunately, the publisher hasn't done the book any favours in terms of presentation. It feels and looks like a high school textbook, printed on rather unrefined paper and apparently bound to last the length of the school year. It isn't a book a bibliophile would lust to own. This is a shame because it isn't only Australian high school students who should be encouraged to read this book, although they certainly should. Anyone wishing to better understand the role the *Constitution* plays in Australian life, law and government would profit from time spent with *Five Things to Know about the Australian Constitution*.

△ Carolyn Adams



Five Things to Know About the Australian Constitution

By Helen Irving,
Cambridge University
Press, Oct 2004 pp 168

\$32.95