Reviews

Refugees & State Crime

This book documents the increasingly punitive law and order policies of developed nations in relation to asylum seekers and refugees—and in particular, those of Australia.

A central argument of the book is that concerns for humanitarianism, that were evident at the time of the signing of the *Convention Relating to the Status of Refugees* in the aftermath of World War II, have been replaced with concerns for the integrity of national sovereignty. Pickering compellingly argues that the asylum seeker has been criminalised—portrayed as a threat to national security, and embodying deviance.

The book is well-researched, drawing on a number of disciplines—including criminology, human rights, and refugee law and policy—as well as on an extensive range of primary and secondary sources, such as cases, legislation, parliamentary debates, media releases, newspaper articles, journal articles and text books. However, while it is a scholarly piece of writing, the language and style of writing often hinders its accessibility to the general reader.

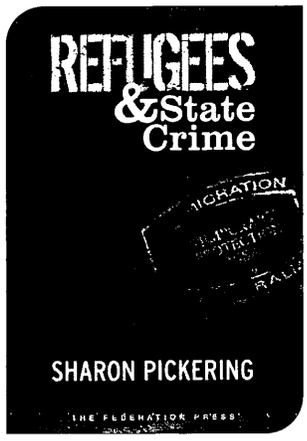
Pickering examines the intensifying focus of developed nations on deterring people from seeking protection. A number of Australian Government policies, which Pickering argues are founded on deterrence, are explored, namely mandatory detention, the issue of temporary protection visas, and the creation of the 'extra-territorial frontier' through the adoption of the 'Pacific Solution'. Pickering draws comparisons with the role of deterrence in punishing and sentencing offenders. She notes that criminologists have challenged and critiqued the operation of deterrence in the criminal justice system, which is kept in check by principles of proportionality and parsimony, and argues that deterrence within refugee policy is open to a similar critique.

The book considers the treatment of refugees from a number of perspectives, including an analysis of the roles of the executive, the judiciary and the media in contributing to the criminalisation of the refugee. A particularly compelling chapter is one in which Pickering undertakes a thematic textual analysis of newspaper articles relating to asylum seekers and refugees over a three-year period, including articles reporting on the MV Tampa and 'Children Overboard' incidents. There is an outstanding analysis of the power of language through word choice, sentence structure, dramatisation, the location of passive and active voices, and the use of binary oppositions—for example in talking about 'us' and 'them'—to portray refugees in a negative light. Examples are that we are soon to be 'swamped', 'weathering the influx' of 'waves' 'tides' 'floods' of 'queue jumpers' 'illegal immigrants' 'boat people', and 'bogus' and 'phoney' applicants who 'sneak in', 'slip through' or 'invade' with 'false papers' or 'no papers'. The metaphor of war is also used—for example, references to 'a sustained assault on Australia's shores'—which implies the necessity of militaristic and defensive responses. Pickering contrasts media responses to the plight of Kosovar and East Timorese asylum seekers, where the language of humanitarianism and justice was used.

Pickering argues that Australia has sought to distance itself from its international human rights obligations, and that human rights protection is increasingly a tool by which democracies measure other developing nations, but decreasingly something by which they measure themselves.

Australia's treatment of refugees and asylum seekers is a controversial issue. There are many voices in the policy debate; not all of which are given expression in the book. However, irrespective of which side of the policy debate the reader empathises with, this book is a powerful, valuable and well-informed contribution to the debate about Australia's treatment of a vulnerable group of people.

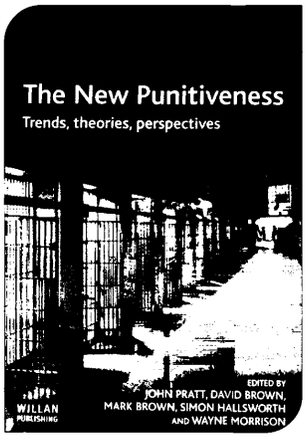
△ Isabella Cosenza



Refugees & State Crime

By Sharon Pickering,
The Federation Press,
2005; pp 222

$55.00



The New Punitiveness: Trends, theories, perspectives

By John Pratt, David Brown, Simon Hallsworth, Mark Brown and Wayne Morrison (eds), Willan Publishing, distributed in Australia by The Federation Press, Feb 2005; pp 346

$125.00

The New Punitiveness: Trends, theories, perspectives

'The New Punitiveness' is a collection of essays written by experts in criminal law, criminology, penology and sociology. Each of the 17 chapters is concerned with the nature, extent or cause of an emerging social and penal phenomenon dubbed 'the new punitiveness'.

Throughout this book it becomes apparent that the new punitiveness defies precise definition. Nevertheless, it is said to have emerged some time in the 1970s and is evidenced by a hardening of attitudes towards those who break the law, by the development of harsh sentencing options and practices, and by the increasingly severe treatment of incarcerated offenders.

The New Punitiveness is divided into four parts. Chapters located in the first part—'Punitive Trends'—examine empirical evidence of the growth of a new punitiveness in a number of Western countries, including the United States and Australia. Chapter one gives a detailed statistical account of the staggering increase of the use of incarceration in the United States since 1973 and is replete with factual titbits. Did you know that in 1993 the state of California, with only seven million residents, had more prisoners than the whole of Italy—a country with 50 million residents? Other chapters in this part examine other indicators of a new punitiveness, such as the revitalisation of sentencing options previously considered distasteful and inhumane, namely, capital punishment, boot camps and chain gangs; and the development of 'supermaximum' security housing units in the United States.

The second part of the book analyses the relationship between the new punitiveness, globalisation and technology. Chapter seven provides a succinct overview of globalisation before examining the way in which communications technology has facilitated the development of a new punitiveness by, for example, enabling the widespread dissemination of catchy political slogans such as 'zero tolerance' and 'life means life'. Chapter 10 provides an overview of the use of electronic monitoring and satellite tracking of offenders in England and Wales, which are European leaders in the use of surveillance technology as a crime prevention tool.

The third part of the book discusses penal trends in countries that appear to have remained impervious to the new punitiveness, such as Scandinavian countries, Canada and Italy. It posits several interesting theories to explain non-punitive penal practices in these countries. For example, do residents in Scandinavian countries have milder attitudes to crime and punishment simply because they fear crime less than residents in other European countries? Chapters in the final part of the book attempt to explain the emergence of the new punitiveness. Is it a product of postmodernism, or does it have its roots in modernity?

The New Punitiveness is a dense text and the complexity of its subject matter is at times compounded by the inaccessible writing style employed by some of its contributors. Those unfamiliar with the discourse of criminology may have to re-read parts of the book to decipher their meaning. Nevertheless, *The New Punitiveness* represents a valuable contribution to an informed and rational debate about modern penal practice and policy. The material in the book is novel and impeccably researched, which is no surprise given the impressive credentials of the contributors and editors. This book is a valuable resource to criminologists, penologists or anyone with an academic interest in 'a new era of punishment'.

△ Althea Gibson

A Great and Glorious Reformation: Six Early South Australian Legal Innovations

The history of law reform in the newly established colonies of the antipodes has rarely been scrutinised in a detailed and comprehensive way. 'A Great and Glorious Reformation' traces, describes and discusses the history and substance of six major legal reforms of one of these colonies—South Australia. These legal innovations became the blueprint for legal reforms in places far beyond South Australia's borders permeating through to other non-common law legal systems.

The colony of South Australia differed from the other colonies on the Australian continent in the calibre and structure of its society. Instead of convicts, South Australia was colonised by settlers from more affluent and influential parts of British society. It became a hotbed of political and legal innovation and reform.

Having introduced the reader to the political and legal environment of South Australia (and to the characters with whom the reader will become acquainted in later chapters such as the conservative Benjamin Boothby), Taylor devotes his second chapter to inarguably the most well known and successful of South Australian-grown reforms of the 19th century, namely the Torrens system of land title. In a lucidly written and interesting chapter, Taylor describes the old system of land title, its inefficiencies and expenses. He then engages in an absorbing discussion centred on whether Sir Robert Richard Torrens in fact conceived the principle behind the Torrens system of land registration, or merely copied a similar system of land registration known as the Hamburg Model, as some scholars have suggested. After thoroughly and skillfully analysing the evidence, Taylor concludes that the principle behind the system stemmed from Torrens himself.

But examples of ground-breaking and radical reform do not end there. As evidence that the will for reform also emanated from the grass roots of the South Australian society, Taylor presents the story of a South Australian Grand Jury who, in defiance of a judge's instructions, delivered a presentment (a conventional commentary on the state of the law and its administration in the colony) to argue that the administration of justice required the recognition of Aboriginal customary law, including those laws concerning punishment of criminals and inter-tribal customs. More enduring and influential were legislation and judicial decisions which allowed individuals to sue the colonial government in contract and later in tort.

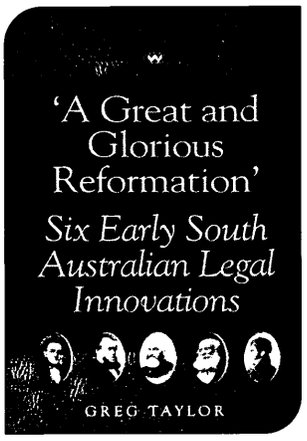
The chapter I found particularly intriguing is concerned with clubs and societies legislation, which was introduced to allow for a smoother and more effective system of incorporation for associations. This reform has had an enormous effect on the growth, diversification and development of civil society in Australia and around the world.

Giving the right to an accused and his/her spouse to give evidence at trial was also a South Australian innovation. The reform was based on the rationale that the guilty would incriminate themselves while giving evidence and that the innocent would dispel suspicion and construct a successful defence. Taylor explains that South Australian legal pioneers even considered the undesirability of the making of adverse comments on the failure of the accused to give evidence, a principle only recently brought into evidence law and practice by the High Court.

However, not all of South Australia's early reforms were successful. For example, legislation designed to fuse the jurisdiction as well as the rights and remedies of the common law and equity was neither taken up by South Australian courts nor by any of the other colonies.

Some of the great and glorious reforms of the south-most colony of the British Empire were taken up by or heavily influenced the decisions of the Imperial parliament in Britain and permeated beyond the empire's frontiers to continental Europe, Asia and the Americas. Others did not leave the shores of Australia but were nevertheless of crucial importance to the legal development of the colonies. *A Great and Glorious Reformation* is a thorough and enlightening study of not only early Australian reform but of the prerequisites and causes of far-reaching and ground-breaking law reform.

△ Pouyan Afshar Mazandaran



A Great and Glorious Reformation: Six early South Australian legal innovations

By Greg Taylor, Wakefield Press, 2005; pp 211

$24.95