Criminal Justice in Australia by Peter Sallmann and John Willis (Oxford University Press, Melbourne, 1984) pp. 1-240 (including index). Price $25 (hardback), $11.99 (soft cover). ISBN 0 19 554459 5; 0 19 554458 7.

The preface to this new work by Messrs Sallmann and Willis commences with the observation that it was not until the 1970's that any worthwhile literature on the subject of the Australian criminal justice system began to emerge. Such works as have been published during the last decade have tended to deal with specific aspects of criminal justice rather than attempt a sustained analysis of the whole of the criminal justice process. The authors express the hope that their book will go at least part of the way towards filling this gap in the Australian literature. They describe themselves as having adopted a 'broad, policy-oriented analysis of the criminal justice process' which they concede must, of necessity, be selective. The issues chosen for discussion are said to be of central importance in the current Australian criminal justice climate. The basic criteria by which they assess criminal justice are stipulated as being fairness, openness, accountability and efficiency. These are 'central to a liberal democratic society and of obvious relevance to any assessment of its criminal justice system'. Measured against these criteria our system is condemned as being sadly deficient.

That, in a nutshell, encompasses the entire scope of this enterprise. Written in clear and simple language (for a predominantly lay audience) the various themes covered are dealt with in a totally unpretentious manner. The authors succeed admirably in their goal of ventilating for discussion a number of the most contentious issues singled out for attention in the current debate on our criminal justice system. Thus a reader unfamiliar with the parameters of some of the hoarier chestnuts in this area is treated to a stirring, if somewhat banal (and conceptually inaccurate) account of the 'right to silence' and the 'privilege against self-incrimination', a useful critique of the role of the police in exercising prosecutorial discretion, a strongly-worded attack on the process of 'overcharging' offenders, and a timely reminder that the police contribution to the the debate on acquittals in the higher courts has been profoundly dishonest. The authors' criticisms of the increasing use of statutory reversals of the onus of proof are well made, and give cause for sober reflection.

Less satisfactory, however, is the failure to achieve any real depth in the analysis of most of these issues. Superficiality is to be expected if not wholly condoned, in a work of this nature. How could anyone reasonably expect to provide anything more than the barest gloss over the wide range of matters encompassed within this book? The authors foreshadowed that this would be the approach adopted, and it might be churlish to criticize them for doing precisely what they set out to do. Whether they should have set out to do it in this fashion is another matter.

Of more concern is the uneven quality of much of the writing in this book. Illogical conclusions acquire no greater persuasive force through being dogmatically stated. Why should one accept the argument that 'implicit' in the right of police to question suspects is the assumption that such questions 'will generally' be answered? Is this a prediction based upon empirical foundations? Is it a normative statement? Or is it nothing more than a meaningless and confused *melange* which has a dangerous potential to be misunderstood? The confident assertion that of necessity there exists a conflict between a right on the part of the police to put questions, and a right on the part of a suspect to decline to answer them, is incapable of rational justification.

The authors do their case little good when they arrive at conclusions which simply do not flow from their premises. It is curious to see how the perfectly acceptable argument that the Crown should not abuse its powers to 'stand aside' jurors becomes caught up in an ideological quest for the purity of the 'basal principle of randomness' in jury selection, and leads ultimately to the bizarre conclusion that an accused should have no right to challenge other than for cause.

Dogmatic assertions permeate the chapter on sentencing as well. The authors are unfair in their criticisms of the response made by the Chief Justice of Victoria to the questionnaire circulated by the Australian Law Reform Commission in the course of its *Survey of Judges and Magistrates* for its *Reference on Sentencing of Federal Offenders*. It is all very well to favour empirical research, and the need for sound factual premises to underlie all decision-making (as the authors do *ad nauseam*). When, however, the questions asked are, in large measure, inane and unanswerable, the recipient of the questionnaire has every right to resist bogus empiricism. Moreover, the authors attack the proposition that sentencing is the 'province of judges' and that it is a 'highly subjective, discretionary process'. Yet

they provide no practical alternative mechanism and certainly no real guidance for performing this most difficult of tasks.

The single most recurrent theme of this book is its persistent attack upon pragmatic considerations, and its constant calls for 'principles' to be articulated and implemented in the criminal justice system. We are told that we need to agree on basic values right from the outset — otherwise law reform takes place in a vacuum. We are further enjoined to be more responsive to the contributions of social scientists, psychologists and laymen rather than lawyers (even those who have built up experience and expertise in this area). Finally, we are offered the heavenly path to follow for effective reform: a National Inquiry into the Criminal Justice System.

I beg to differ. During the last decade we have had a plethora of 'National Inquiries' of this nature, both here and overseas. Each Inquiry has defined the nature of the problem to be resolved in a similar way. Their recommended solutions have, of course, differed. In the end it is a matter of adjusting competing interests. It is perhaps not too cynical to suggest that a diverse and liberal community is incapable of total agreement on the basic values which should underlie its criminal justice system. The perspective of the policeman is not the perspective of the lawyer, and the lawyer's perspective is not that of the judge or the juror. 'Pragmatism' and 'compromise' are not dirty words. Indeed, they themselves reflect values which really ought not to be ignored. These may be the only values which will permit a complex social mechanism of this type to function. The world of fantasy would have it otherwise — but we live in a real world.

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