

BOOK REVIEW

ORDER IN THE COURT

Lothian Publishing Company, 1988, 110 pp.

It is normal for a book review to offer at the beginning the names of authors or editors. As neither are provided in this work, it left this reviewer somewhat perturbed by the task ahead: if no-one claims responsibility, it must indeed be a risky proposition.

Further investigations revealed that the book contains extracts from the Verbatim Columns of Bar News, while copyright - and one presumes, responsibility - is claimed by the Victorian Bar Council.

Having long subscribed to the view that brevity equals quality, this reviewer was pleased to find that the volume is a slim one of 110 pages, consisting mainly of - surprise, surprise - anecdotes from the Verbatim Columns of Bar News, but also some cartoons of varying quality.

The extracts included record some of the more memorable moments of courtroom conflict, often at the expense of Counsel:

Prominent Q.C. (cross-examining witness): I cannot translate that into evidence you see.

Witness (losing patience): I will break it down for you. I did not realise you were so obtuse.

Prominent Q.C. (in ameliorating tone): I am sorry, you will have to live with me as I am.

Witness (unforgivingly): I will endeavour to manage while I am here.

and police:

Questioner (cross-examining a policeman): Are you not taught as part of your training how to conduct an interview?

Policeman: How do you mean - physically or verbally?

However, a certain healthy cynicism also makes its mark in the book, as in this graffito from a Victorian Supreme Court convenience:

The law is like marijuana. The harder you suck, the higher you get.

Given the book's anecdotal format, it is better dipped into more or less at random rather than read in its entirety or at one go (as one might attend a course of law lectures, for example).

The humour is sometimes whimsical, sometimes obvious, now subtle, now crude (rather like lawyers, perhaps), but generally very amusing in small doses. While one is attracted by the notion that too much of a good thing can be absolutely perfect, *Order in the Court* goes the other way; it should be used as an occasional antidote to the more serious side of legal scholarship. In this context, it is to be recommended as a very enjoyable birthday present or stocking-filler for the legal eagle in your life.

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BOOK REVIEW

UNDERSTANDING CRIME AND CRIMINAL JUSTICE

Findlay M, Hogg R, (eds) Law Book Co, 1988, 349 pp.

According to the editors of this paperback 'the general purpose in this reader has been to promote the examination of various issues within contemporary crime debates as they relate to broad arenas of social analysis and social policy', and 'to encourage respect for the autonomy of many of the debates, analyses and practical struggles waged around crime-related issues'.

The book is divided into 15 chapters covering different topics. This makes it a difficult task to provide a review of the book along conventional lines. The most appropriate way to review it seems to be a brief summary of each chapter.

Chapter 1 examines the development of feminist criminology over the last two decades and notes that one of the results of the emergence of feminist criminology is the identification of 'men and crime'. The author, Judith Allen, explores the implications of this process of identification and concludes that the further investigation of men and crime will be indispensable for the consolidation and understanding of feminist criminology.

Chapter 2 considers the emergence of left realist criminology in Britain and its relevance to Australian criminology. The author, Russell Hogg, criticizes some aspects of left realism, in particular, policing and police reform and concludes that if left realist criminology is seen as an expression of general socialist theory 'criminology loses its purpose and its specificity'. Further, he states, 'The best contribution criminology can make to socialist policies is to concern itself with specific analyses of crime and crime policies'. This statement expressly provides support for the purpose of the book; that is the encouraging of the autonomy of debates of crime-related issues.

Chapter 3 examines the legislative reforms in New South Wales (in particular the N.S.W. *Crimes (Domestic Violence) Amendment Act (1983)*) which was introduced to give more effective protection to victims of domestic violence. In the view of the authors, Julie Stubbs and Alison Wallace, the most substantive reform concerning domestic violence was the strengthening of the protective order. While the authors commended the overall effect of the legislation, they concluded that the greatest single obstacle to the effective operation of the legislation was the police.

Chapters 4 and 5 look at the area of corporate crime. In Chapter 4, Adam Sutton and Ronald Wild considered corporate crime in the context of small and medium sized firms. Their view is that the traditional criminologists theory of small business offenders as 'victims of circumstance' or as 'individual small-scale confidence tricksters' is in need of revision in light of the new criminology. What is required is a more complex relationship that includes both elements of a structural perspective and an interactional or agency view. Chapter 5 discusses the applicable sanctions for corporate crime. The authors Brent Fisse and John Braithwaite rejected the idea that sanctions should be applied to responsible individuals within the corporation, and see the most promising approach as a public enforcement system which would monitor internal justice systems of corporate defendants.

Chapters 6 and 7 provide clear examples of the need to encourage debate on criminological issues within the context of social analysis and policy. The authors of Chapter 6, Patricia Ward and Ian Dobinson, direct their attention to society's response to heroin. They determine that any solution to the problem must be considered in the light of the particular social environment in which drug addiction occurs. Chapter 7 goes on to consider the relationship of drug control policies to organized crime. Grant Wardlaw is of the view that on the whole strategies of law enforcement agencies have not worked and that the answer to the drug problem lies in the community adopting policies that concentrate on the demand side of drug use rather than the supply of drugs.

In Chapter 8, Elaine Fishwick provides a comparative analysis of the legislative and procedural reform adopted in England, Wales and New South Wales in respect of sexual assault. The evidence established that despite the differences existing in each legislature, the consequences flowing from a decision to report a sexual assault to police were broadly similar. This emphasized the need to tackle sexual assault in the wider social context and not just on a legislative front.

Chapter 9 details how through legal categories of public order the mechanism for 'political and social contestation of a class and racial nature has occurred'. The author, Chris Cunneen, considers specifically the link between public order offences and the aboriginal and working class communities. He is of the opinion that this political and social contestation can only be understood in the context of the dominant capitalist political economy that exists in Australia.

Chapter 10 examines the effect of the repeal of the Summary Offences Act 1970 (N.S.W.) and its replacement by less draconian street offences legislation. Sandra Eggar and Mark Findlay show that by selective non-enforcement by the police, the new legislation was shown not to be working. This, they conclude, indicates the need for public accountability of police. This aspect of public accountability of the police is discussed further by Ian Freckleton and Hugh Selby in Chapter 11. They found

that, putting aside definitional problems of public accountability, the police by the use of internal and external mechanisms such as efficiency auditing, external review bodies and internal investigation units, can become more accountable.

The issue of sentencing is discussed in Chapters 12 and 13. In Chapter 12, Garth Luke demonstrates the need to consider the use of gaol for juvenile offenders in the context of wider social objectives. Data relating to the sentencing of juveniles in New South Wales reveal that gaol is not being used as a last resort for juveniles, despite the commonly held view that this is the case. The sentencing theme is continued in Chapter 13 by Don Weatherburn. He submits that general sentencing principles fail to impose any constraints upon judicial discretion and that specific sentencing policies do little to solve this problem. Sentence uniformity can in Weatherburn's estimation be promoted in two ways. One is to encourage the Court of Criminal Appeal to provide sentencing guidelines and to give greater feedback on sentencing practices.

Chapter 14 by David Brown, Hilary Kramer and Meredith Quinn examine the issue of women's imprisonment. They concentrate on the establishment of the New South Wales Women in Prisons Task Force as well as the role of race and class in the imprisonment of women. The authors identify some of the possibilities and limitations of reform strategies referable to women's imprisonment and end by finding that there is a need to obtain a specific meaning to women's imprisonment; a meaning that extends beyond the punishment of crime generally.

In Chapter 15, Stephen Gaunton examines recent theories concerning modern forms of penalty and incarceration and observes that there is a requirement for theories of penalty to conceptualize relations such as intra-class conflict and gender before the development of appropriate policies can occur.

Overall, the book serves its purpose well. The chapters written by a diverse group of authors from a wide range of occupations go a long way towards showing that many of the contemporary issues in criminology can only be considered in a wider social context. The result of this is that crime is seen as 'embedded in spheres of social practice' and that it is not possible to sustain the notion of 'crime in general'. What is required is an examination of particular individuals and events to see why they are the 'targets of social intervention'. This book will fill a vacuum in criminology. So far the majority of criminological writings in Australia have concentrated upon traditional criminology, whereas this paperback provides a review of the more recent theories.

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BOOK REVIEW

LIONEL MURPHY: A RADICAL JUDGE

Edited by Jocelyne A. Scutt, McCullough Publishing
(in association with Macmillan Co. of Australia),
Carlton, 1987, 275 pp.

This book is not a biography of the Honourable Justice Lionel Keith Murphy, nor is it another collection of his judgments. Rather, it consists of twelve papers by various contributors about some of the stages of Murphy's remarkable career - as a barrister, politician and Attorney - General - and about his decisions, as a judge of the High Court of Australia, in particular areas of the law - the Constitution, Family Law, economic regulation, taxation, women's rights, property, human rights and the media.

The authors are eminent academics, lawyers, ex-politicians - among them, Gordon Bryant, Neville Wran, John Goldring, Marcus Einfeld and A.R. Blackshield. The foreword to the book was written by the Honourable Justice Michael Kirby. The Honourable Justice Mary Gaudron provides an epilogue.

The book begins with three chapters describing the main features of Murphy's life as a barrister, politician and Attorney-General. In these chapters Murphy is portrayed as not just a radical judge. His whole career was marked by a desire to reform the law in aid of social change.

In 'Murphy the Barrister', Neville Wran, who was a member of Murphy's chambers in Sydney, paints a portrait of a man who was generous, totally absorbed in the law, committed to the issues which he felt strongly about and ingenious in his legal approach. In his paper, Laurence Maher outlines the number of important reforms which Murphy instituted when he held the office of Attorney-General.

Those chapters which examine Murphy's judicial decisions on specific topics are particularly fascinating. The topics are ones on which Murphy expressed notably strong views, often in dissent. The authors provide a general background to relevant aspects of the particular branch of the law and assess Murphy's relevant decisions, showing the influence which they had on its development. The facts of illustrative cases are presented in an interesting way, with telling quotations from Murphy's judgments and speeches and perceptive commentary.

In 'Murphy and Taxation', Richard Krever follows the course of the notorious High Court judgments in tax cases in the 1970s and shows that

'throughout the tax avoidance era Justice Murphy's contributions to the debate were crucial both in their philosophical and practical impact. His opinions were not only in tune with the times outside the walls of the High Court, but they demonstrated to both his brethren on the bench and the public at large that an alternative technique of purposive interpretation was not only intellectually desirable, but also easily implemented as a practical alternative to the destructive doctrine of liberalism.'

In her paper on Murphy and Family Law, Jocelyne Scutt shows that, far from being 'anti-family', Murphy held a 'practical, compassionate, but staunchly family and marriage centred view.

Most of the authors had some past association with Murphy and all clearly have a general empathy with many of his ideals. The book is not, however, excessively partisan. In the final, thought-provoking chapter, 'The Murphy Affair', Professor Blackshield deals with the allegations and canvasses all the possible interpretations and legal consequences of those allegations. He then draws his own very reasonable conclusions about Murphy's culpability, the procedures adopted by the Government to deal with the allegations, and the constitutional implications of the whole episode.

The book is well edited. There are no jarring differences in the style and structure of the chapters. Consequently it reads as a cohesive whole.

I would thoroughly recommend *Lionel Murphy: A Radical Judge* to anyone who is looking for a general overview of the career of this most fascinating and controversial of Australian judges.

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