

ence to the 'discrimination' or 'essential government function' doctrines. This makes the book difficult to use as a general reference on constitutional law, unless the reader is already familiar with the subject. Perhaps the authors have assumed the major use of the book would be by experts who seek to discover all the references to sections or phrases in the Constitution, rather than students and less expert readers. A far more comprehensive index would make the book more accessible to a wider audience.

These criticisms apart, the book has many virtues. First, its format enables the reader to find not only the decided cases, but also all High Court references and discussion of particular sections and phrases. Secondly, the discussion of most sections is thorough, covering not only the cases but the literature as well. Thirdly, the style is clear and accurate, making the text easy to read and understand. Finally, and desirably in an annotated Constitution, the authors state the law as it is, rather than extending their own views as to what it ought to be. Where the meaning of a section is not clear or has been interpreted in a controversial way, however, the authors set out arguments for and against competing interpretations. Despite its shortcomings, the book is a valuable contribution to Australian constitutional literature, and hopefully there will be many future editions.

*Michael Stokes\**

## **Sex, Power, and Justice: Historical Perspectives on Law in Australia**

**Edited by Diane Kirkby**

**Oxford University Press, 1995, pp xxv, 302, \$29.95 (pbk)**

This collection grew out of Diane Kirkby's long-term interest in 'law as an institution of power and potential social change'. With a 'passion for justice', she is committed to bringing 'a new critical awareness to the study of legal practices, legal knowledge, and legal practitioners, as constituted by, and in, historically-specific circumstances'. Following Carol Smart, Kirkby seeks to reconceptualise the discipline of law in relation to women, the first step being to gain 'historical knowledge of laws' creation and practice'. The essays in-

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cluded are intended to provide those who take a broad approach to legal education with suitable material for their classes, but also to attract a wider audience 'keen to learn more about feminist perspectives on key areas of law in Australia's history'. In a brief introduction, Kirkby attempts to draw the major themes together, but at times the Introduction reads as an unnecessarily laboured justification for this feminist project to demythologise law's power. Kirkby makes the important point that the law has impacted on 'different women differently', depending on their class—poor women have always been 'the targets of legal regulation' and, a point she could have made more of, have not always received the support of their more prosperous sisters.

Kirkby divides the book into four parts. These are grouped thematically and arranged 'roughly chronologically' to impart a sense of 'sequence and change over the two centuries of Australian colonisation'. The authors are a mix of experienced researchers, who provide a summary of more detailed published work, and younger writers whose work is less well known. Part One deals with sexuality and makes it quite clear that women's sexual desires and practices have always been at the sharp end of the law, and the criminal law has not always accorded women due protection from male exploitation. Kay Saunders summarises contagious-diseases legislation in Australia between 1868 and 1945, while Jill Bavin-Mizzi's analysis of 190 rape cases and 256 carnal knowledge cases in Victoria, Queensland and Western Australia in the late nineteenth century shows the courts' view of good character to be more important in determining trial outcomes than statutory changes to protect women. Less well known is Ruth Ford's work on police harassment of lesbians in the early twentieth century. Lesbianism was not criminalised by statute for fear of bringing it 'out into the open'. Despite legal advances made since the 1970s, Gail Mason admits that more than law reform is needed to solve the problem of rape.

Part Two deals with punishment. In one of the better chapters, Lyndall Ryan considers how female convicts were progressively treated more punitively in Van Diemen's Land, especially in the 1840s. She asserts that solitary confinement was endured by convict women before it was endured by convict men. Cathy Coleborne shows how the female lunatic body became the object of medico-legal scrutiny in nineteenth-century Victoria, and gives greater than usual prominence to the police in lunacy matters. Susanne Davies summarises the issues raised by feminists, studying female offences and criminalisation. Her particular concern is how women's sexual and reproductive activities, prostitution, abortion and infanticide, were subjected to policing and punishment from the 1880s to the 1980s. In Part Three, four chap-

ters are dedicated to the family. Penelope Hetherington stresses that race, class and gender have determined how the law treated children in Western Australia between 1829 and 1907, when greater control and compulsion was evident. The legal 'segregation, exploitation, and assimilation' of aboriginal families, with prominence given to South Australia, is the focus of Peggy Brock's chapter. Hilary Golder and Diane Kirkby give a breathless account of marriage and divorce laws from colonial times until the *Family Law Act 1975*. Ros Atherton dissects feminist efforts to establish a widow's claim to maintenance and guardianship of her children by right of relation in New South Wales in the late nineteenth and early twentieth centuries.

Part Four on citizenship and the state is allocated six chapters. Describing women as 'fringe dwellers', Margaret Thornton charts their struggle to gain admission to university and the legal profession against paranoid arguments that they would threaten 'the domain of reason and the good order of society'. Marjorie Theobald and Carole Hooper consider the obstacles faced by women in their attempts to gain access to every stage of education, from elementary to university levels. Rosemary Hunter stresses that female workers experienced state regulation differently according to their class and ethnicity. After examining equal pay principles, occupational health and safety regulations, and sex discrimination legislation, she concludes that benefits for women were 'partial and equivocal'. Although Andrew Markus gives a good summary of White Australia legislation, his account tends to camouflage gender concerns. This is corrected by Fiona Paisley in her account of feminist challenges to the White Australia policy between 1900 and the 1930s. The final essay, by Ann-Mari Jordens, highlights how, after 1945, post-war immigration challenged notions of citizenship which had deprived non-Anglo Celtic people of basic rights and social welfare benefits. Jordens carefully notes that despite advances made by marginalised groups such as Aboriginals, women, the mentally ill and the disabled, members of these groups still face 'enormous practical and cultural obstacles to the exercise of citizenship rights and responsibilities'.

The collection ends with a helpful guide to further reading. Perhaps the most obvious omission is Lucia Zedner's work on penal policy, *Women, Crime, and Custody in Victorian England* (1991), absent, perhaps, because it does not sufficiently genuflect to feminist theory. Generally, though, the contributors to this collection use feminist theory to inform rather than determine (or hijack) their approach and jargon does not intrude unnecessarily.

The main problem with these essays is the attempt of most to cover too much ground. The most successful essays focus on particular issues over a relatively short historical period. Fewer contributors, with more space, would have been preferable. More attention might have been given to the early decades of Australian settlement. The index could also have been more complete—it omitted mention of the Tasmanian feminist Edith Waterworth (see Paisley's chapter), for example, a significant figure whose achievements deserve greater recognition. Despite these qualifications, this book makes a worthwhile contribution to our understanding of how the law affected women in Australian history. It clearly shows that law reform might be a necessary condition to granting women full citizenship, to removing discrimination, exploitation and oppression, and to furthering the ends of justice, but is not sufficient in itself. The struggle continues.

*Stefan Petrow\**

## **A New Zealand Legal History**

**By Peter Spiller, Jeremy Finn and Richard Boast Wellington  
Brooker's, 1995, pp xxxviii, 308, NZ\$65 (pbk)**

In recent years, lawyers and historians have shown increasing interest in the legal history of New Zealand and this book will provide a very good introduction for any person seeking 'to understand the major themes of New Zealand's legal development'. As the book provides a systematic overview, it will also no doubt stimulate research into 'particular areas of legal history in greater depth'. Jeremy Finn authored the first three chapters and stresses how the English legal system 'exercised both an institutional and an intellectual influence' on the legal system of New Zealand. Governors, bureaucrats and lawyers 'largely derived their perceptions of law from the English system. There was a common conceptual framework, a set of shared assumptions as to what the role of law in society was and ought to be'. Finn admirably summarises the development of English law and institutions from 1066 to the nineteenth century in 54 pages, drawing on leading textbooks listed in an appendix. Whether Finn needed to go quite so far back is a moot point but students should find his sum-

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