

law, and the sentencing procedures therein, require a holistic approach which utilises aspects from various disciplines, including sociology and law. To simultaneously respect the victims and ensure the integrity of the law, adequate punishment must be administered without resorting to 'victors' justice'. Only in examining our motivations and processes behind punishment can this be reached. Henham's philosophical and theoretical analysis has added to this scholarship.

*Sophie Rigney**

Necessity, Proportionality and the Use of Force by States

Judith Gardam, Cambridge University Press, 2004, pp 259, \$180

Necessity, Proportionality and the Use of Force by States by Gardam provides an excellent guide through the intricate legal web governing the relations between states during times of military hostilities. The text leads the reader through the doctrines of necessity and proportionality as they apply, and have historically applied, to acts of aggression undertaken both by States in their own right, and more recently under the authority of the United Nations as a collective. The application of these doctrines to non-international conflicts is also considered from a theoretical perspective.

The text examines these doctrines at various points throughout their development, including their consideration and ultimate conception by Middle Age scholars, as well as before and after the implementation of the United Nations Charter. Though the role of the United Nations, and particularly the Security Council is explored, the author acknowledges an explanation of the function and procedures of these bodies is beyond the scope of the text. Despite this, Gardam provides an insightful overview of the legal interpretation and application of the resolutions these bodies pass, set against the backdrop of the necessity and proportionality doctrines.

Whilst we are faced everyday with questions as to the social legitimacy of armed conflict waged around the globe, this text, perhaps admirably when considering the social climate prevailing at the time of publication, most notably the international debate in relation to the legality of the US-led campaign being waged in Iraq during its compilation, concerns itself only with the legal justifications for, and legal frameworks within which

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international conflicts operate. The text provides an excellent analysis of the legal context in which armed conflicts take place. This analysis encompasses both in terms of the legal justification for the resort to forceful action by States, and the legality of the means and methods of warfare employed on the battlefield. The latter is discussed from the point of view of customary International Law, as well as under the various Charters, Treaties and Conventions which States have implemented in attempts to regulate the use of force.

Whilst the concepts underpinning an analysis of this dichotomy between the legal justification for resorting to force, and the justification of different means and methods of utilising force are complex, differ depending on the aspect examined, and are often intermingled, the author easily overcomes these issues through thorough explanation and tightly structured argument. Where there have been changes to these doctrines, the author clearly and succinctly acknowledges this, providing explanations as to the alteration of jurisprudential opinion, including the presumed reasons for the modification, and demonstrations of the adjustment in the practices of States engaged in conflicts. Gardam also acknowledges the barbarity inherent in armed conflict, and provides perspective on restraint both actually implemented and attempted to be implemented by various bodies during the course of the development of International Law in this area. As such, the text, especially the earlier chapters, will provide much to those interested in the operation of the frameworks in response to the need to respect fundamental human rights.

The often difficult concepts are well developed through the use of practical historical examples of armed conflicts. Consideration is given to a wide range of contemporary military operations ranging from the Argentinean occupation of the Falklands, to the NATO operations in Serbia, and the US in Iraq, with a view to extracting the customary practices of States in a way which is both informative and thought provoking. While the content will certainly be of interest to those interested in the legality of military campaigns waged and actions on the battlefield, the author declines to provide an opinion as to whether the military actions considered in the text fall within the legal framework, instead choosing to use apparent excesses to demonstrate the lag between the practice of States and the underlying legal framework, saving the reader from subjection to a political debate. In fact, despite the often controversial nature of the content of the text, including the application of the doctrines to historical actions justified under the right to self-defence, both in the capacity of States as individuals, and in the collective, the text

is probably as far removed from being a political piece as can be imagined.

Whether or not the reader has an avid interest in the legality of armed conflict, Gardam's work will provide an excellent footing into the world of international armed conflicts and the use of force by States. It is clearly written and highly readable, with the obviously extensive research done by the author providing an entry point into the field for those with a keen interest to delve further into the concepts developed within the text.

*Ronan Fenton**

Work Choices: What the High Court Said

Andrew Stewart and George Williams

The Federation Press, 2007, pp 190, \$29.95

The High Court of Australia handed down its highly anticipated decision in *New South Wales and Others v Commonwealth* [2006] HCA 52 on Tuesday 14 November 2006. Many commentators, including the authors of this book, have claimed that the case, known as the *Work Choices Case*, was the most important judgment delivered by the High Court since the *Tasmanian Dams Case* in 1983. Consequently, legal practitioners, academics, law students, labour relations professionals and anyone involved in the labour market have frantically begun reading the long and complicated judgment to make sense of its significant implications for both labour relations and the balance of power between the Commonwealth and the States.

In order to assist in this convoluted process, Andrew Stewart and George Williams have attempted to provide a relatively concise summary of the major issues discussed by the High Court and commentary on the subsequent implications. Both authors are widely recognised as leading experts in their relevant fields and are able to draw on this expertise to provide valuable insight. Andrew Stewart is the co-author of the popular text *Labour Law* (with Breen Creighton) and has extensive experience in the labour relations field while George Williams co-authors the text *Australian Constitutional Law and Theory* (with Tony Blackshield) used by thousands of constitutional law students and professionals across Australia. In addition Stewart and Williams played significant roles commenting on the *Work Choices Case* in the media both before and

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