

## The Australian Criminal Justice System

The Mid 1990s

edited by Duncan Chappell and Paul Wilson; Butterworths, North Ryde, 1994; 327 pp; \$65.00.

*The Australian Criminal Justice System* first appeared in 1972. This is the fourth edition with a new collection of articles covering a range of issues about crime and criminal justice in Australia. The topics include: trends in crime; crime prevention; juvenile justice; women; and sentencing. One pleasing aspect of the book is that discussion of the relationship between indigenous people and the criminal justice system finds its way into several chapters other than the 'designated' one.

The chapter by Lincoln and Wilson, 'Aboriginal Offending: Patterns and Causes', deals specifically with indigenous issues. It provides a brief but comprehensive review of the criminological literature in the area. The chapter presents a summary of imprisonment rates, types of offences for which Aboriginal and Torres Strait Islander people are charged, sentenced and imprisoned, and an overview of juvenile justice issues. The writers then discuss 'hidden rates of crime' where they draw attention to issues relating to domestic and other forms of violence within Aboriginal communities. In the section on 'Theories of Aboriginal Offending', the discussion focuses on various explanatory models, including 'racism and discrimination', 'history of colonisation and oppression', 'crime as resistance', and 'cultural differences'. All this is fairly well-worn territory for anyone working in the area. However, the chapter is certainly useful as an introductory overview to the material. One positive aspect is that the writers take the time to state categorically that they are not presenting the material in the context of 'an Aboriginal problem: instead it is one of professional accountability and of non-Aboriginal criminal justice methods and processes' (p.62). The chapter concludes with a brief discussion on the need for self-determination and a reference to the role of 'family group conferences'.

It is unfair to criticise Lincoln and Wilson for not seriously looking at the implications of 'family group conferences' for Aboriginal people in what is

essentially a short overview chapter. There is also a brief discussion of 'family group conferences' in the chapter 'Trends in Juvenile Justice' by Naffine and Wundersitz, but not within a context which provides any real depth or critique.

However, in my view, it is imperative that Aboriginal organisations look carefully at what is being offered with the current 'flavour of the month' in juvenile justice reform. The official popularity of 'family group conferences' and the speed with which they are being introduced is enough to ring alarm bells. A real difficulty is whether the state-defined and controlled mechanisms, introduced without consultation, will in reality undermine processes of self-determination at the community level. This, of course, is precisely the opposite outcome to what the official rhetoric is suggesting. Yet the danger is that family group conferences will become another 'community' justice mechanism which is imposed and con-

trolled from above and in a form which Aboriginal people are supposed to accept. And if the process fails, it will no doubt be seen to be the fault of Aboriginal communities.

More fundamentally, the philosophical and political assumptions underpinning discussions about 'restorative justice' and 'reintegrative shaming' need careful deconstruction. These terms are being applied to processes such as 'family group conferences' which have been designed outside of the political, social and cultural world of indigenous people in Australia. Yet they are being held up as solutions to the 'problems' of Aboriginal people in the criminal justice system. How convenient. And how utterly devoid of a commitment to the principles of negotiation and self determination.

These comments on 'family group conferences' are, of course, tangential to a review of Chappell and Wilson's book. The book itself more than adequately fills the task of providing a current overview of relevant issues in contemporary criminal justice administration.

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## Australian Criminal Justice

by Mark Findlay, Stephen Odgers and Stanley Yeo; Oxford University Press, South Melbourne, 1994; 374 pp; \$39.95, softcover.

It has been a decade since I first selected the Peter Sallmann and John Willis text, *Criminal Justice in Australia*, as the preferred reader for the criminal justice class which I introduced to the former South Australian CAE in 1985.

As it became dated I struggled to find another text that covered the areas I wished my classes to explore. It needed to be an introductory text, expressed coherently and logically, and free of jargon and legalese.

I toyed with the idea of using Elizabeth Ellis' 1988 book written in conjunction with the New South Wales Bureau of Crime Statistics and Research, *Thinking About Crime and Justice* but it was designed to be, essentially, a legal studies text, useful at

the high school level but not for tertiary students.

The various Duncan Chappell and Paul Wilson volumes that make up *The Australian Criminal Justice System* series (Butterworths) had the same problem as the Pluto Press *The Criminal Injustice System* series, the 1983 Allen and Unwin, *Issues in Criminal Justice Administration*, and Law Book Company's *Understanding Crime and Criminal Justice* (1988). That is, the publishers tossed together a range of issues that followed no logical sequence and were chosen for no other reason, often, than they were the current study interests of the writers selected as contributors by the editorial staff. I have no criticism of that style, other than to say that it does not suit students or lecturers

who wish to work through a text from introductory principles to a range of conclusions.

At last Oxford University Press have filled the criminal justice teaching and learning void with this latest text. It has all the hallmarks of being the preferred student text in this area for years to come. For a start, the authors make it clear throughout the book that the notion of justice is conjectural and contingent. Indeed, the best a system can do in order to attempt to ensure justice for all, declare the authors, is to put in place mechanisms that attempt to forestall or avoid injustices. Justice cannot be guaranteed by the legal system or proper law enforcement. These systems in fact harbour the potential for great injustice unless care is taken in implementation.

The authors present their material in a manner which is not ideologically driven. Arguments for and against propositions are placed fairly and evenly for the reader to consider. Comparisons from international jurisprudence are made at regular intervals and reform initiatives are discussed in a manner that indicates that they, too, are integral to the legal and social material presented. (I look back with great regret upon the days of my legal training two decades ago when the moment the word 'reform' was mentioned students' minds (including mine) went into slumber mode.) Here, the 'ought' is given equal time with the 'is'.

The book is a combination of the sorts of topics one would expect to be covered (albeit in overview), dealing with criminal law, evidence, criminal procedure, sentencing, police studies and (to a lesser extent) criminology. Of particular note is the way in which the male and Anglo-Saxon nature of the legal system is highlighted at every opportunity. Disdain for the unjust status quo and suggestions for reform are in abundance in the text.

There are some areas which have been neglected. This is not necessarily a criticism, for to include every topic would be to expand the book to too great a length. Recent efforts to include Aboriginal customary law in criminal law and procedure are not addressed. The 'private' policing phenomenon which has been with us for two decades and its consequences for the criminal justice system is ignored. The new (from January 1 1994) juvenile justice system in South Australia that incorporates the New Zealand 'family conference' model has been omitted. The field

of private 'negotiated' justice is a growing area and one that required some discussion. Chapters 7 and 8 (Punishment and Penalty, and Sentencing) cover much the same areas and should have been consolidated.

Style-wise, I would have preferred paragraphs in the text. Assuming that this book is designed to be a student workbook, it is imperative that lecturers do not have to change all of their references each time a new edition is published. Finally, the index should have included the forty pages of footnotes. The information contained therein cannot be unlocked easily without cross-referencing.

Chapter 10 brings together a number of essential criminological themes: the role of victims in the system, gender

bias in the law, indigenous peoples' issues, juveniles, corporate responsibility and the way in which the law often discriminates against those with intellectual disabilities. Each of these topics is dealt with, however, as something of an add-on, almost as an after-thought. My preference would have been to incorporate each of them into the mainstream text.

In summary, however, these criticisms pale in comparison to the wealth of information that is contained in the book. The text is timely and an excellent reader for any class that is studying the criminal justice process. I recommend it highly.

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## Police and Government — Histories of Policing in Australia

*by Mark Finnane; Oxford University Press, Melbourne (1994) \$24.95*

Mark Finnane describes his task in this book as 'to show how policing may be seen as a historically-formed practice of government in a modern society' and to remember and reconstruct the past in order 'to forego the illusion that the present is very much worse or better than the past'. Discussing the history of police organisations in Australia Finnane develops a series of themes, rather than historical narratives, to argue the case for a specific Australian history of policing. He argues that despite increasing police research in Australia a number of difficulties confront attempts to evaluate the impact of policing. These difficulties include:

a tendency to apply the lessons of police research in the United Kingdom or the United States, on the presumption that the organisation of policing in Australia is basically similar; a tendency to argue for particular forms of regulation of police in Australia which fail to take account of the historical circumstances producing the present arrangements; and a fundamental lack of research on the history of legal regulation and, in particular, the history of the criminal justice system.

Finnane divides his book into three sections. The first, 'Police and government — Public Histories', explores the historical organisation of police forces as important state instrumentalities. He examines why Australian forces were consolidated, centralised bureaucra-

cies, rather than local ones, and looks at the influence of uniquely Australian phenomena like the gold rushes, bushranging, and the transportation of convicts. Amongst the topics considered in this section is the ongoing controversy surrounding the relationship between police commissioners and ministers. Finnane looks at a couple of contemporary crises that have led to the resignation of either police ministers or police commissioners and places the events in historical context. He concludes that the relationship is one that is likely to remain contentious and that:

In periods of social conflict, it appears that the ill-defined boundary in Australia between political responsibility for police and operational autonomy generates potentially destructive divisions between ministers and police commissioners.

The chapter titled 'Conflict, Surveillance and Control' is less interesting than the subject matter might suggest. This is a hot topic but the writing here is flat. Jenny Hocking's book *Beyond Terrorism* (Allen & Unwin, Melbourne, 1993) covers similar ground and is far more compelling.

The second section 'Governing by Police — Social Histories', assesses the historical role of police in social life in Australia. In this section Finnane is concerned with understanding the 'differential impacts of policing': in other