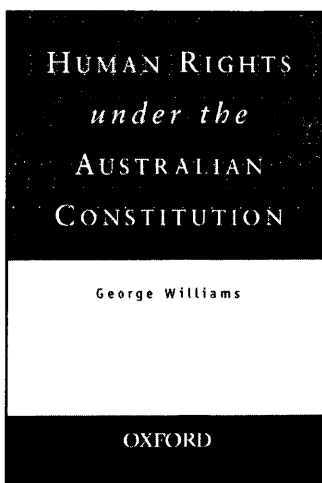


# Reviews

***Human Rights under the Australian Constitution* by George Williams, Oxford University Press, 1999; pp317; \$75.00 (hardback).**



George Williams has produced a very thoughtful and well-constructed analysis of the way judicial interpretation of the Australian Constitution has established protection of certain human rights; and the limitations inherent in this approach to protecting them.

This book gives a comprehensive overview of the historical and legal background to the recognition of human rights under the Australian Constitution and legislation, and detailed discussion of the major cases on this subject, providing an extremely helpful analysis for anyone with an interest in either human rights or constitutional law.

However, the text is also accessible for the more general reader. The book's structure allows even readers unfamiliar with the Constitution and international Conventions to gain an understanding of the basis of the internationally recognised human rights, the background to the Australian Constitution, the history of the interpretation of rights under the Constitution, and the limitations of this approach in achieving a coherent framework of human rights protection in Australia.

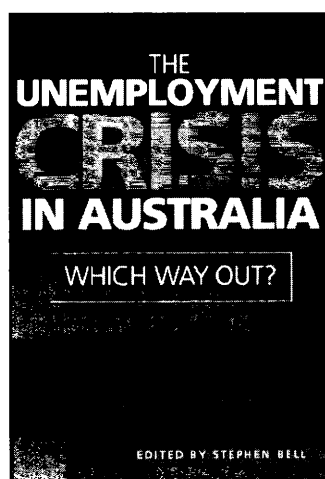
The most interesting chapters deal with the development of jurisprudence on implied rights arising from the Constitutional assumption of a system of representative government and the separation of judicial power. Williams acknowledges the pioneering judgments of Justice Murphy, who sought to develop a rights-based jurisprudence decades before the rest of the High Court, and explores the differences between the legal reasoning adopted by his Honour and that of the Court in more recent decisions such as *Australian Capital Television*.

Williams discusses not only the ways in which the Constitution has been interpreted to protect human rights – for example, the doctrine of separation of judicial powers has been invoked to ensure protection for citizens against arbitrary use of power by the executive or the legislature (discussed in *Lim*) – but also the limits of such interpretation. He points out that the decision in *Brandy*, although consistent with established jurisprudence on the separation of powers, restricts the resolution of disputes concerning human rights to court-based decisions.

Williams concludes that the regime of rights as currently interpreted 'is inadequate. The protection offered is ad hoc and of limited scope. ...Ultimately, [legally recognised rights] do not effectively protect fundamental freedoms from being abrogated by Australian parliaments'. The Australian government recently has signalled its displeasure with the United Nations' international treaty committee system, suggesting that in liberal democracies the protection of human rights primarily should be a matter for governments, which periodically have to face the voters, and for the independent courts. As Williams' book makes plain, however, if this is to be the case, then Australia needs a much more comprehensive and effective *domestic* regime for dealing with complaints about human rights.

– Helen Dakin

***The Unemployment Crisis in Australia - Which way out?* by Stephen Bell (Ed), Cambridge University Press, 2000; pp328; \$38.40.**



One of the aims of this book, as stated by the editor, is to describe the degree and magnitude of unemployment problems confronting Australia. The 11 contributors present essays detailing the scope of the unemployment problem and the range of measures in place to deal with it. The con-

tributors also discuss the way in which unemployment is distributed according to age, gender and region; critically evaluate two theories of the cause of unemployment and present a 'demand-side' analysis of the problem.

Several chapters of the book are devoted to detailed arguments against the theory that excessive or inflexible wages largely drive unemployment. The contributors attempt to show that the fundamental link between wages and employment levels is not particularly strong, and present evidence demonstrating that various forms of labour market deregulation have not been strongly linked to employment growth.

*The Unemployment Crisis in Australia* also provides a comparison of the labour market performance of Australia, UK, New Zealand and the US over the past 30 years, and uses these comparisons to further the argument that wage cuts and labour market flexibility will not solve unemployment.

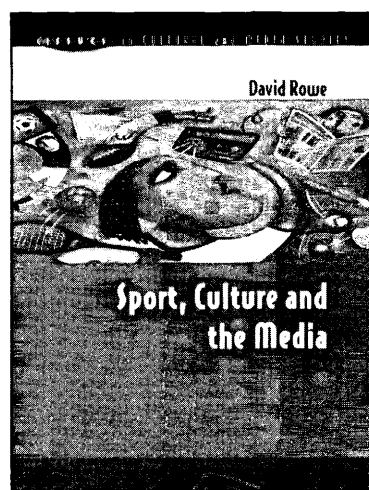
The final chapters of the book present two strategies to be pursued as solutions to unemployment. The first, described by the contributor as 'the quickest way to low unemployment', advocates the provision of publicly funded employment in highly job-intensive areas such as the community services sector. The second strategy

is the implementation of various forms of training and skill enhancement. These two programs are not suggested as a universal remedy for unemployment, but they do offer assistance, especially in terms of assisting the long-term unemployed back into employment.

This book covers a vast area in its investigation on the unemployment problem in Australia. Overall, *The Unemployment Crisis in Australia* is very interesting, but I would recommend it only to those academics, or industrial relations and human resources specialists wanting an in-depth analysis of unemployment theory, as it is largely beyond the reach of the casual reader.

– Elena Rodriguez

***Sport, Culture and the Media. The Unruly Trinity* by David Rowe, Open University Press, 1999; pp 208; \$43.91.**



David Rowe is a sociologist, currently Associate Professor of Media and Cultural Studies in the Department of Leisure and Tourism Studies, University of Newcastle. Part 1 of the book takes a socio-historical approach to under-

standing the interaction between sport, culture and media. It chronicles and analyses the extraordinary rise of sport as a major part of media interest, if not obsession, and the manner in which sport itself has been consumed by the media. In doing so, the book considers the discipline of sports journalism and suggests that many sports writers want to be regarded as serious writers whose work is an art form, but most feel manacled to the facts, gossip or titillation. Rowe also discusses the political economy of sports media, which has largely seen money rule, with the global media barons viewing sport as the jewel in the crown. Part 2 of the book deconstructs some of the images and myths of

sports writing, commentating and use of technology. These sounds, words and pictures can denigrate or elevate, unify or dislocate – individuals, communities, nations and even the world. In particular, televised sport has used a repertoire of dramatisation, ‘cartoonisation’ and sexualisation to keep and hold large audiences.

Looking into the perhaps all too near future, Rowe discusses whether a consumer on the Internet will be able to transform into an auteur, able to manipulate camera angles and shot selection, monitor athletes’ pulse rates and body temperature, getting close enough to the action to almost smell the sweat. Finally with the arrival of virtual reality, Rowe discusses the possibility of being able to feel the blows of a hard tackle, if the consumer and the athlete both wear virtual reality body-suits.

One case study of great interest is the Andrew Ettingshausen (ET) defamation case whereby ET, a ‘rugby league icon and nice guy’, successfully sued HQ magazine for publishing, without permission, a picture of him naked in the shower. Rowe argues that the case highlights three key areas of sensitivity in photographing the male sports body: preventing a view of the penis (an image much less policed in the case of women’s genitalia); avoiding any suggestion of male passivity or helplessness (ET was in this case caught unawares, whereas in other cases he had posed clothed for women’s magazines which capitalised on his sexual appeal); and concentrating on its heterosexual rather than homosexual appeal.

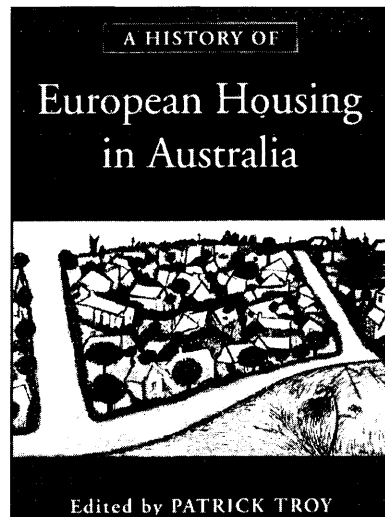
Another study is one-day cricket, which according to Rowe, has been moulded well to the demands of television in terms of its structure and guaranteed result. The aim is make the game fast and furious with instant gratification for those who may find ‘real’ cricket boring. The argument is taken even further to suggest that the one-day match is packaged in much the same way as a one-hour television melodrama, for example a cop or mystery show. The conclusion to the one-dayer is, hopefully, a hectic chase sequence with formulaic action and plot to allow viewers to immerse quickly into the ‘story’.

The book is well written, refreshingly free of jargon and academic impenetrability, with a useful glossary of key

terms. This book is, of course, just the thing to read during the feeding frenzy of a Sydney Olympics. Well, at least during the ads or the synchronised swimming.

– Michael Barnett

***A History of European Housing in Australia* by Patrick Troy (Ed), Cambridge University Press, 2000; pp325; \$38.40.**



*A History of European Housing in Australia* is the final project of the Australian National University’s Urban and Environmental Program, which closes with the release of this publication after 35 years of

research on housing and the urban planning environment. The study includes 18 essays by academics from a variety of backgrounds and focuses on Australian housing and its relation to the development of cities. Looking at housing from white settlement to the 1990s, this book is the companion to the previously published *Settlement: A History of Indigenous Housing in Australia*.

While focusing on a ‘social history’, the essays take a practical and theoretical look at issues surrounding housing in relation to the variety of economic, cultural and political contexts that construct the idea of ‘home’. This study encourages a new perspective of these issues, which to date has been limited within the contexts of historical periods and housing styles.

An aspect of this study looks at the practical issues surrounding housing such as finance, building regulations, owner-builders, and responses to the environment and access to raw materials. One essay looks at the intersection between early European migrants and the Aus-

tralian environment where fixed ideas of housing clashed with a lack of building materials and unexpected weather conditions, resulting in creative and distinctive housing styles and solutions. The dramatic shift that took place in Australia after World War II is also chronicled here, with the proliferation of dwellings and the cultural influences of new migrants reflected in their homes and gardens.

Other aspects look at the societal functions of the house and home, from the aesthetic reflection of the social values and economic status of the inhabitants, to the home as centre of 'domestic production and consumption' when people regularly sourced their meat and three veg from the backyard.

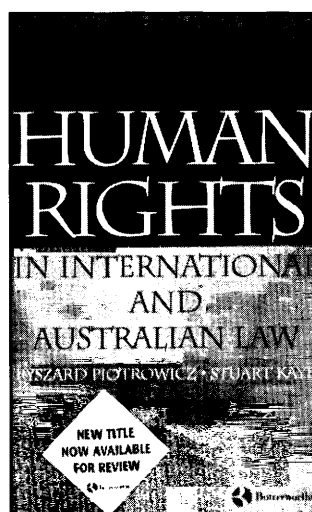
Moving indoors, the late 19th century 'socio-spatial' arrangement of rooms is explored as each takes on an individual function and feminine and masculine domains are allocated. Kitchens move inside and American manufacturers seductively market new stoves as 'parlour furniture'. The dining room takes shape as the 'healthy' place to consume food away from the preparation area, and bedrooms start shedding their (literally) unclean image. Issues surrounding privacy are also explored, between members of the house and the outside world as well as those between the inhabitants themselves.

The 'Great Australian Dream' is examined and our high percentage of homeowners queried as to whether this truly reflects an egalitarian society. The static nature of housing is also challenged as, regardless of their structure, houses shift and change to reflect the social and cultural values of the inhabitants moving through them.

While this study remains most useful to those academics, professionals and social scientists involved in issues surrounding home, housing and society, this accessible and highly readable text will also stimulate the interest of anyone who craves a history beyond the four walls. It certainly makes for interesting viewing on your next walk down a suburban street.

—Stephanie Dawes

***Human rights in international and Australian law*  
by Ryszard Piotrowicz &  
Stuart Kaye, Butterworths  
2000; pp 320; \$60.28.**



This book emerged from the human rights course offered by the authors in Tasmania from 1995 onwards. It is directly aimed at a student audience and seeks to provide an introduction to human rights in international law and its recognition in Australia. As Ivan Shearer states in the foreword, 'It is a book about the shape of

the woods. There are many other books and articles which can take the reader further into the woods to study the particular trees'. This is both the strength and the weakness of the book.

On the one hand, it provides a comprehensive overview of international and domestic human rights mechanisms. The inclusion of material on regional human rights mechanisms and international humanitarian law is particularly useful. But on the other hand, the text is of such a broad, general nature that it lacks any depth of analysis, and appears at times to be nothing more than a list.

Chapter 3 is a good example of this – it is titled 'Specific measures for the international protection of human rights'. The chapter lists all human rights treaties and declarations of the United Nations system, and then focuses on four of the conventions which it purports to examine in some detail. This detail is procedural setting out a general background to the introduction of the relevant treaty, how the committee under the treaty operates and so forth. Yet in this examination it does not elaborate on a single principle contained within the treaties. In relation to the Convention Against Torture, for example, the authors tell us no more than that the treaty is about 'torture'. But what is it? How does it differ from cruel, inhuman or degrading treatment,

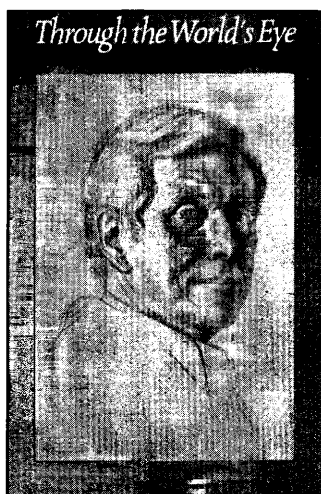
which is also covered by the convention? And how is it relevant to particular issues, such as determinations of refugee status (particularly the obligation of non-refoulement)? These are undoubtedly complex issues. The problem with the book is that it doesn't even hint at the complexity.

The same criticism can be made in relation to the author's consideration of all the other main human rights treaties. Core principles of the human rights system, such as self-determination, the meaning of non-discrimination and equality, remain contested by many States parties. Yet all we are told by the authors is that these rights exist (not what they actually are, or where their meaning is contested).

On the whole, I found this to be one of the less interesting additions to the plethora of books about human rights issues released in the past few years. Unless you just want a list of human rights mechanisms and treaties, you would be much better advised to seek out recent works by George Williams (*Human Rights Under the Australian Constitution*), David Kinley (*Human Rights in Australian Law*) and Sarah Pritchard (*Indigenous Peoples, the United Nations and Human Rights*), which provide comprehensive and clear explanations of human rights issues, as well as detailed, persuasive analysis.

– Darren Dick

***Through the World's Eye*  
by Michael Kirby AC CMG,  
The Federation Press  
2000; pp256; \$43.94.**



This collection of papers, originally presented as speeches, was selected and edited by Charles Sampford, Sophie Blencowe and Suzanne Condlin. It is unique on a number of levels, which combine to make it both enthralling to read and a fascinating record, not only of

Michael Kirby's professional and personal life, but of his time.

While Kirby's extra-curial writings and opinions are well documented, the instant appeal of this book is its promise to provide rare insight into the knowledge, thoughts, and opinions of a High Court judge – access to which is typically limited to the Commonwealth Law Reports. These papers demonstrate that the law, its practice and its reform are deeply embedded in our daily lives and impact greatly on our social and ethical imperatives. Kirby achieves this by combining profound insight, analytical mastery and unshakeable humanity.

The breadth of subject areas which is covered by these writings is similarly unique, and is essentially borne of Michael Kirby's long involvement in the international sphere of human rights law. At the same time, his analysis of the Australian legal climate and his personal recollections – ranging from renowned High Court judges and judgments, to his experiences as a young pro bono civil libertarian lawyer – reveal his grass roots affinity with his own country.

The collection is divided into two parts, the first of which focuses upon human rights issues – contemporary threats to the fundamental rights of individuals both nationally and globally, the need to respond to such threats, and the legal and practical mechanisms for doing so. Issues covered include: the doctrine of non-violence in conflict resolution; Australia's policy on refugees; the humanitarian crisis in Cambodia; the Human Genome Project; privacy issues arising from the information technology explosion; same-sex relationships; the HIV/AIDs pandemic; and the protection of civil liberties. Two common threads are the importance of the law and legal institutions in protecting the fundamental rights of marginalised and otherwise disadvantaged individuals and groups, and the need for municipal laws to adopt the developing tenets of international law in respect of these issues.

The second part of the collection focuses on the law and its institutions at a domestic level. It includes papers on judicial activism and creativity in Australia and overseas; the relationship between the rights of the Australian people, the Constitution and the courts; and attacks on the judiciary and the legal profession.

*Continued on page 92*

Continued from Page 82: 'An Australian Restatement?'

## Conclusion

Obviously there are some areas of the law that have been recently reformed and are, as it were, in a reasonable state of repair. However, some areas of law – including contracts law, torts law, and compensation for disablement – are badly in need of simplification, and, in many cases, of reform.

An Australian Restatement would do a lot for the morale of the legal profession. It would greatly reduce the time taken now in finding out what the law is, and thus enable lawyers to return to their true task of using prudence and practical wisdom to guide clients in ways that solve their legal problems and contribute to the overall welfare of our society.

I propose the best way forward is for the Commonwealth government to give a reference to the Australia Law Reform Commission for investigation and report on the feasibility of an Australian Restatement, and on the best method of proceeding with it.

The law in America has been greatly improved by that country's restatement. The present generation of lawyers can, and should, make a concerted effort to improve the laws in Australia in the same way.

## Endnotes

1. *DM Walker Oxford Companion to Law Oxford Clarendon Press 1980, 1065.*
2. 'The American Law Institute, 1923-1998' (1198) *JP Frank* 26 *Hofstra Law Review* 615, 622.
3. *id* 621
4. *id* 632
5. *id* 638-639
6. A Mason 'Corporate Law: the Challenge of Complexity' 2 (1992) *Australian Journal of Corporate Law*, 1.
7. M McHugh 'The Growth of Legislation and Litigation' (1995) 69 *Australian Law Journal* 37).
8. *id* 42

Continued from Page 87: 'Reviews'

Common among these papers is the desire for the law and its institutions to develop in a way that reflects fundamental shifts in social circumstance, cultural norms and the moral will of the Australian people.

It is telling, and may have been deliberate, that the central message of both the first and last papers in the collection is the importance of standing compassion side by side with the law, whether in the sphere of international human rights or as a suburban solicitor.

In his foreword, Geoffrey Robertson states that his only regret about this book is that it cannot replicate the live performance of Michael Kirby's speeches and those occasions when 'the wisdom in his words is audible, almost tangible, in the controlled passion of his utterance, leavened with topical (but invariably polite) jokes and snatches of poetry'. When I saw Kirby speak at a recent conference, I was struck by the way in which he was greeted by the audience – not simply as a greatly revered judge of the High Court, not only as a 'statesman', but as a celebrity in the true sense of the word. His stage presence was remarkable, and much of what he conveyed was, as they say, in the delivery. Similarly, that Kirby is often a hilariously funny orator is less apparent among these papers. Of course, this is partly due to the gravity of much of the subject matter, but also because these papers were presented as speeches and inevitably something is lost in the written form.

This being said, this book is an extremely enjoyable and rewarding read. The legal concepts are clearly explained, the arguments compelling and the passion behind them refreshingly apparent. The papers are also factually rich and informative and draw upon a range of the author's personal experiences, as a judge, as an international humanitarian and as a person. Consequently, each paper provides a valuable understanding not only of its topic, but of one of Australia's most remarkable individuals.

– Matt Hall

\* *The Hon Justice Michael Kirby AC CMG was the inaugural Chairman of the ALRC, and the founding editor of Reform.*