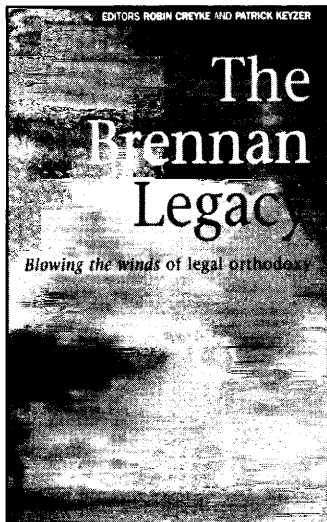


Reviews

***The Brennan Legacy: Blowing the Winds of Legal Orthodoxy* edited by Robin Creyke and Patrick Keyzer, The Federation Press, Sydney, 2002; pp224; \$75.00.**



Legal academics Robin Creyke and Patrick Keyzer have produced an edited series of papers delivered in honour of Sir Gerard Brennan AC KBE at the Australian National University's annual Public Law weekend in late 1998, only a few months after his retirement as the 10th Chief Justice of the High Court of Australia.

The collection is designed to celebrate Sir Gerard's contribution to the development of Australian administrative law. Few would argue with the suggestion made inferentially by Stephen Gageler SC in his paper that Sir Gerard and his predecessor as Chief Justice, Sir Anthony Mason, were the giants of Australian administrative law in the final quarter of the 20th century. Unlike Mason, however, Brennan made his mark in the field of merits review as well as judicial review of administrative action.

In 1976, whilst a part-time member of the Australian Law Reform Commission, Sir Gerard was appointed as the first President of both the Commonwealth Administrative Appeals Tribunal (AAT) and the Administrative Review Council. Essays by former colleagues, including the second President of the AAT Mr Daryl Davies, record the significance of Brennan's influence upon the AAT, especially in the Tribunal's adoption of a 'judicial' approach to its work and in characterising itself as part of the judicial system, rather than as an agency within the executive branch of government. Whilst these views are not universally acclaimed within government today, Sir Gerard must be justly proud of the comment in the recent Leggatt Report (on the UK tribunal system) that Australia has the most advanced tribunal system in any common law jurisdiction.

Sir Gerard, in his own paper in the collection, which was written without the constraints of judicial office, is critical of the current Commonwealth Government's attempt, recently abandoned by the Attorney-General, to replace the AAT with a super Administrative Review Tribunal. The criticisms from a man noted for moderation are strong. According to Brennan, the proposed new tribunal would imperil the rule of law in administration. Sir Gerard concludes his discussion of this issue with the hope that "the independence, competence and legal capacity of the AAT are left unimpaired". Regrettably, Sir Gerard did not comment in his essay on the criticisms, raised elsewhere in the collection by Robin Creyke, that the AAT has not adopted the informal procedures advocated by some of its architects such as Professor Harry Whitmore.

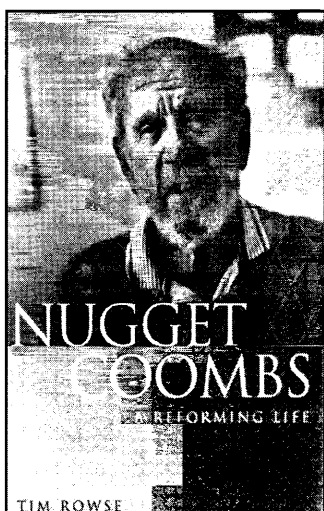
For years to come students of administrative law will read the judgments of Sir Gerard and his High Court colleagues in landmark judicial review cases such as *Kioa v West*, *Attorney-General (NSW) v Quin and Craig*

v South Australia. After grappling with competing ideas about the theoretical justification for judicial review, be it the common law — the view expounded by Sir Anthony Mason — or implied limitations on statutory grants of power — the Brennan view — some of those students may enjoy the comment by Mason in his paper that “[l]ike Voltaire, I recognised Sir Gerard’s right to hold a contrary, though misguided, view”. Both the Brennan and Mason papers are valuable because they contain clearly distilled statements about their approaches to the developing jurisprudence of judicial review. It is a pity, perhaps, that neither felt drawn to comment upon whether root and branch constitutional change is necessary because judicial review pursuant to section 75 of the Constitution may have too heavy a load to bear in controlling modern excesses of executive power.

This is a book for the administrative law aficionado, for law students and for legal historians who seek an insider’s view of the remarkable fruits of the work of the committee chaired by Sir John Kerr over 30 years ago which designed modern Australian administrative law, and of the work of Sir Gerard Brennan who has done more than anyone else to shape it.

— Neil Rees

***Nugget Coombs: A Reforming Life* by Tim Rowse, Cambridge University Press, 2002; pp 419; \$59.95.**



Samuel Johnson once criticised biographies that “rarely afford any other account than might be collected from public papers” and so tell little about the subject’s “real character”. This latest biography of Nugget Coombs tells the reader little about the

subject’s personal life. Indeed, Rowse reports that when asked what made Nugget Coombs tick, a friend of Coombs for 50 years replied, “I never knew. I just saw him as a series of admirable projects”.

A Reforming Life is more concerned with the public life of Coombs and his ‘admirable projects’. The biographer is interested in exploring the tension between Coombs’ role as a public servant and an advocate, and larger issues such as:

- How can government draw on the expertise of policy intellectuals while continuing to honour public sovereignty?
- How to develop a theory of public policy that is economically rational, socially integrative and ecologically responsible?
- How is the balance to be struck between self-determination and accountability?

Rowse presents his subject as an ‘economic rationalist’. This may surprise some readers who typically associate Coombs with the Left. However, the author uses the term to denote ‘politics’ viewed from the standpoint of ‘the economy’ rather than the machinery of deregulation and market-based solutions. As a student Coombs adopted Keynesian theory which he successfully implemented in post-war reconstruction and fighting inflation in the 1950s. However, in the 1970s Coombs was forced to rethink and rebuild his theory of the economy to integrate social concerns such as the self-determination of Indigenous Australians and the environment.

As an economist, intellectual, public servant, and advocate, Coombs’ public life spanned half a century and included a range of publicly-mandated offices including Director-General of Post-War Reconstruction (1943–9), Governor of the Commonwealth and Reserve Banks (1949–68), Pro-Chancellor of the Australian National University (1959–68) and its Chancellor (1968–76), Chair of the Australian Council for the Arts (1967–73), Chair of the Australia Council (1973–4) and Chair of the Council for Aboriginal Affairs (1967–76).

The extraordinary diversity, influence and vision of Coombs’ career ensures that this biography is consis-

tently engaging. The early chapters provide an adequate account of Coombs' childhood and education. The following chapters document Coombs' various and extraordinary achievements. For example, it was Coombs who persuaded politicians, business and trade unions that a full-employment economy was feasible. Coombs helped found the Australian National University. It was Coombs who persuaded the government about the need for an Australian Council for the Arts and later the Australia Council. He also agitated for conservation and Aboriginal policy to be brought within the one framework and the development of a new economy based on ecological sustainability.

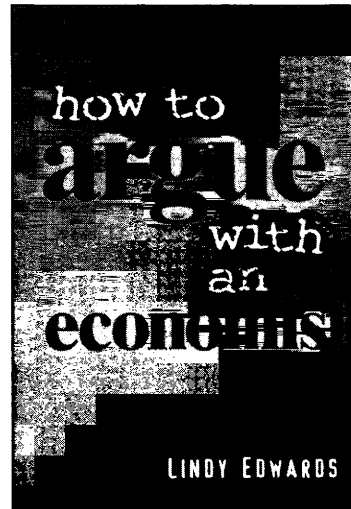
Coombs was also involved in the reform of the Australian Public Service developing the concept of the 'responsive public servant', calling for a more diverse recruitment base, and addressing the sexism of the public service and public service unions. Coombs was particularly committed to the autonomy of Aboriginal people, perhaps best expressed in his campaign for a 'treaty'.

Of particular interest was the story of how Coombs' public comments on Aboriginal Australians and customary law caught the attention of the ALRC President Michael Kirby, and stimulated Gerard Brennan QC (as he then was) to privately circulate a proposal that the ALRC investigate the recognition of traditional Aboriginal law. This proposal culminated in *The Recognition of Aboriginal Customary Laws*, which to this day is one of the ALRC's most respected and cited reports.

These 'reform stories' not only tell us something about Coombs, his intellectual interests and Australia's post-war social, political and economic history; together they present a model of effective reform and the model reformer. They also leave the reader nostalgic for public discourse driven by such intellect, compassion and optimism.

— **Jonathan Dobinson**

***How to Argue With an Economist* by Lindy Edwards, Cambridge University Press, 2002; pp180; \$27.95.**



Lindy Edwards is based at the Research School of Social Sciences at the Australian National University. She was an economic adviser under the Howard government and former adviser to Natasha Stott Despoja. With her background, it is

not surprising that she has an in-depth understanding of the operation of government and the bureaucracy.

In this book, Lindy Edwards challenges the views of the economic rationalist, whilst providing an understanding of economic rationalism and its failures. I found it very interesting and easy to read. The book is well researched and the author makes strong arguments. Some readers may take issue with some of her political observations and her portrayal of the bureaucracy as being dominated by economic rationalists, but this is to be expected in a book containing some very controversial ideas. Nonetheless, regardless of where you sit on the political or economic spectrum, this book should give you something to think about.

The book is divided into five sections, beginning with a dissection of the 2001 Federal Election and a discussion of the Australian political scene in general. It goes on to discuss the general mood of discontent in the electorate — as typified by the rise of Pauline Hanson — and how this relates to the growth of economic rationalism. The author explains the govern-

ment's decision-making process, the workings of the public service and how the central agencies make their decisions. The relationship between these different sectors of government is explored and it is shown how economic rationalists have come to dominate the process of decision-making.

The second section provides a brief history of economics and an explanation of basic economic concepts. This book was written for a broad readership and this chapter enables a reader, without an economic background, to follow the arguments the author builds in the second half of the book.

The third section is a discussion on the different world views of the 'punters' and the 'economic rationalists'. In a number of areas of life, the author describes the values of the economic rationalist and how the 'punter' has difficulty relating to these ideals.

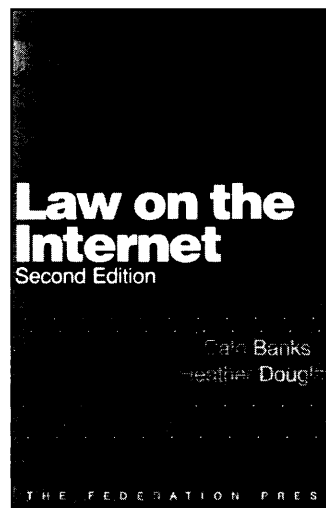
The fourth section provides arguments using terms that the economic rationalist understands, taking on some of their basic assumptions and showing where they fail. The author offers many strong arguments and good alternatives, although some of her ideas are quite radical — eg pricing commodities on a sliding scale determined by an individual's income.

The final section asks 'where to go from here?' Whilst not claiming to have definitive answers she does provide some suggestions as to the way forward.

How to Argue With an Economist may not provide the arguments to convince the hard-core economists, but it may give them something to think about. For the rest of us it prompts us to ask important questions such as 'What sort of society do we want to live in?' and 'What sort of government do we want?'. It contains some controversial ideas but they are worthy of consideration. This book is definitely worth reading if you ever had doubts about the rationalism of economic rationalism.

— Greg Diggs

***Law on the Internet* by
Cate Banks and Heather
Douglas (2nd edition),
The Federation Press,
Sydney, 2002; pp168;
\$38.50.**



Searching the internet, or 'surfing the net' as it's sometimes called, is on its surface a relatively easy task — find a search site, punch in the name of what you want, press 'search' and...receive a list of 1,000,000 sites that might contain relevant material. As the quantity of material available on the internet

has mushroomed, searching through that morass of information to find just what you want has become a real skill. *Law on the Internet* is an invaluable guide for people searching for legal information within this morass.

Written in a simple, straight-forward style, this guide to legal sources on the internet is easy enough for even the most computer-illiterate researcher to use. The guide begins by introducing the basics of web searching, including a list of useful search engines and how to get the most out of them. Common terms and tools are explained simply, such as how to use Boolean operators and what web addresses mean. Most helpful for more experienced researchers is the section on the 'invisible web' with some tips and sites on how to find information that might not be turned up using conventional search engines and methods. This section is particularly useful as it teaches the reader skills for improved searching, rather than merely listing search sites.

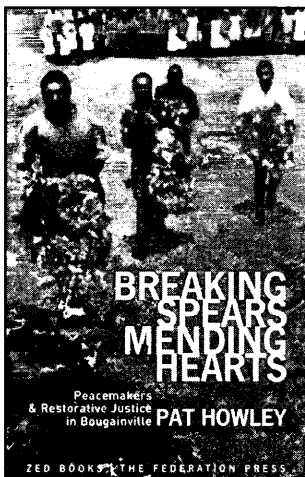
The bulk of the guide is made up of lists of websites containing legal material. Sites for legal searches, libraries, universities, government, law journals and

legal dictionaries are included along with more specific sites grouped by legal subject. These groups are also linked to one another when areas of law may overlap. Best of all, the content of each site is summarised and the frequency with which it is updated is noted to allow researchers some idea of the currency of information held on the site. This is invaluable, enabling researchers to focus on the most useful, up-to-date sites first.

Law on the Internet is a thorough, well presented, accessible and timely resource. It will be useful both for those new to legal research on the internet and the more experienced, and provides a compact solution to the often bewildering array of legal information now available online.

— Imogen Goold

***Breaking Spears and Mending Hearts: Peacemakers and Restorative Justice in Bougainville* by Pat Howley, Zed Books and The Federation Press, Sydney, 2002; pp222; \$35.00.**



In late 1988, a civil insurrection led by Francis Ona and his 'Bougainville Revolutionary Army' led to the closure of the giant copper mine in Panguna, on the island of Bougainville, spawning a separatist movement and sustained conflict — including military conflict — with the central government of Papua New Guinea (PNG).

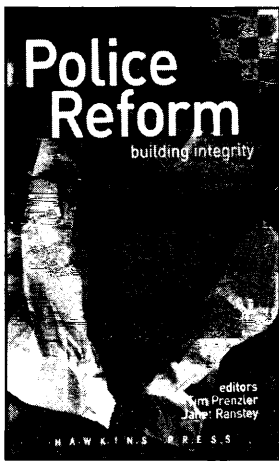
It was not until 30 August 2001 that the Bougainville Peace Agreement was signed, ending years of bloody conflict. Key elements of the Agreement involve the recognition of “an autonomous Bougainville Government operating under a home-grown Bougainville Constitution with a right to assume increasing control over a wide range of powers, functions, personnel and resources on the basis of guarantees contained in the National Constitution”; and the guarantee of a referendum on Bougainville’s future political status — including the option of independence from PNG — “no earlier than 10 years and, in any case, no later than 15 years after the election of the first autonomous Bougainville Government”.

In the decade or so following this declared break from the rest of PNG, and in the absence of the PNG police, national courts and other institutions of authority, Bougainville experienced a necessary return to ‘grass-roots justice’. Chiefs operated village-style moots for dispute resolution, and re-asserted the traditional authority that had been on the wane, especially in relation to young men. When peace talks resumed with the central government, the control of the justice system became a major issue for the Bougainvillians, who wanted to retain a traditional system with customary law to the fore, and without the Western-style separation of powers (for example, they wanted to amalgamate the functions of the local government councils and the village courts) and the emphasis on individual rights rather than group welfare.

In this book, Pat Howley, a Marist Brother and Executive Director of the PEACE Foundation Melanesia, describes the events of this period, in which there was a conscious effort at marrying Melanesian custom with the growing Western concern for notions of restorative justice. This is not an academic work, either in terms of the systematic marshalling of relevant historical, legal and other material, nor in terms of the depth of analysis. However, it does provide some interesting insights, especially when the author utilises local people to tell the story from their own perspectives.

— David Weisbrot

***Police Reform: Building Integrity* edited by Tim Prenzler and Janet Ransley, Hawkins Press, Sydney, 2002; pp234; \$55.00.**



Following from the various research on and inquiries into policing in Australia in the last decade, this new volume edited by two Queensland academics takes an innovative and practical approach to policing reform. In the first part, 'Challenges to reform', the editors set out to explore the nature and causes of police conduct,

beginning with an excellent chapter on global trends and theoretical perspectives and moving on to specialised chapters on such themes as miscarriages of justice, race relations, and sex discrimination. In the second part, 'Innovations in creating ethical police departments', each chapter looks at a different preventative strategy, from monitoring to changing procedures to situational or predictive testing, or at a different complaint response mechanism, including independent investigation and alternative strategies.

This collection of essays by different authors has distinct strengths. The writing style, format and chapter structure make the contents readily accessible to the wide readership targeted by the editors. Particularly impressive is the clear and cohesive style sustained throughout, especially in the consistent style of the introductory paragraphs and sub-titles in each chapter. The interdisciplinary approach, highlighting both the socio-legal aspects and political realities of policing in contemporary society, is also striking.

The only negative comment to be made relates to the editing, not to the quality of the material. Instead of acknowledging the volume's focus on the Queensland experience in the preface, the editors make the somewhat misleading statement that this volume draws on Australian sources and international experience. As it

stands, the overwhelming majority of the chapters relate entirely (or almost entirely) to policing in Queensland, with only the occasional chapter taking a comparative approach or concentrating on another jurisdiction. Since the media exposure, political realities, institutional problems and cultural norms of the various policing jurisdictions touched upon are not homogenous, this is not empirically satisfactory.

Should a second edition be published, the value of this collection could be further increased by the addition of a third comparative section, which could examine why the lessons from Queensland policing are or are not applicable to other jurisdictions.

That said, *Police Reform: Building Integrity* makes a significant contribution to knowledge and insight into policing with its account and critique of the various strategies used to prevent or limit the scope for police misconduct. The value of this contribution is all the more for the thematic organisation, clear focus, breadth of content and depth of analysis of the chapters.

— Kirsten Storry

***Teachers, students & the law* by Drew Hopkins, (national edition), Victorian Law Foundation, Melbourne, 2002; pp66; \$6.50.**



I know a number of teachers that will greatly appreciate having access to this quick reference guide on legal issues for teachers. More of a booklet than a book, the guide provides basic legal information about issues surrounding the teacher-student relationship, such as duty of care, discipline and physical contact, discrimination, defamation, child abuse, family law and crime.

Originally published in a Victorian edition in 2000, this revised edition attempts to cover the laws that apply in all Australian jurisdictions. This makes the book quite vague in some respects (as a consequence of the variety of laws that apply in each jurisdiction), but the essential issues are all covered and the basic legal situation is set out in relation to each issue.

The book is published as a 'quick reference guide' — and this is what you get. It is a great resource for teachers to have on the shelf and refer to if in doubt about the legality of certain behaviour (eg, Can I say this in a report without being sued? Can I use this material without breaching copyright laws?), or when called upon to participate as a witness or support person in a legal case (What is my role if asked to give evidence in a family law dispute?).

However, for many teachers dealing with a particular problem, this book will merely whet your appetite for more information. A small section at the back has further resources and a directory of useful contacts, but this section could benefit from some beefing up.

That said, the book is well worth getting (particularly at the low price the Victorian Law Foundation is selling it at). It is well written and clearly set out, putting legal principles into easily understandable language. The checklists under each heading provide a good overview of things to remember or consider in relation to each issue.

The secret to avoiding many legal problems is to have a basic awareness of the law and to establish appropriate procedures and practices from the outset. This book is at its best in providing teachers with this basic understanding of the law, and hopefully helping to avoid those legal quagmires.

— Lani Blackman

Continued from page 16: 'Terrorism and the International Criminal Court'

Endnotes

1. See N Boister, 'The Exclusion of Treaty Crimes from the Jurisdiction of the Proposed International Criminal Court: Law, Pragmatism, Politics' (1998) 3(1) *Journal of Armed Conflict Law* 27 and P Robinson, 'The Missing Crimes' in A Cassese et al (eds), *The Rome Statute of the International Criminal Court*, (2002), OUP, Oxford, 510-521.
2. See M Drumbl, 'Judging the September 11 Terrorist Attack' (2002) 24(2) *Human Rights Quarterly* 323, 323-324.
3. Article 6 of the ICC Statute.
4. See H-P Gasser, 'Acts of Terror, 'Terrorism' and International Humanitarian Law' (2002) 847 *International Review of the Red Cross* 547.
5. See Drumbl, *ibid*, 336.
6. *Ibid*, 336-338.
7. Letter dated 3 July from Kofi Annan to Secretary of State Colin Powell.
8. A very useful discussion of the United States position can be found in D Forsythe, 'The United States and International Criminal Justice' (2002) 24(4) *Human Rights Quarterly* 974.
9. *Military Order, Detention, Treatment and Trial of Certain Non-Citizens In the War Against Terrorism*, 66 Fed. Reg. 57,833 (16 November 2001).
10. For a useful set of opinions on these commissions see 'Agora' in (2002) 96(2) *American Journal of International Law* 320-358.
11. M Delmas-Marty, 'Global Crime Calls for Global Justice' (2002) 10(4) *European Journal of Crime, Criminal Law and Criminal Justice* 286.

Continued from page 36: 'International Peace Activism: the contributions made by women'

Refugee Women and Children; and the Hague Appeal for Peace. In their continuing efforts to ensure full implementation of the Resolution, these groups have been joined by the Women's Caucus for Gender Justice in the International Criminal Court, and International Women's Tribune Centre (IWTC) — these NGOs are together called the Working Group on Women, International Peace and Security.

7. See further <<http://www.peacewomen.org/>>.