

## *Early Australian Legal Bibliography: a Review Article*



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**Alex C. Castles.** *Annotated Bibliography of Printed Materials on Australian Law 1788-1900*, Sydney: Law Book Co Ltd, 1994. \$120.00

As many who have struggled to find legal material in dusty pre-federation tomes can attest, it is a very frustrating experience. Frequently there are gaps in the material, and one is never quite sure whether this is a deficiency in the library's holdings or whether it was never printed. Castles' *Annotated Bibliography of Printed Materials on Australian Law 1788-1900* is an essential work for solving the mystery of whether the material exists in printed form. It is less helpful, however, on where the material might be located.

### *The History of Printed Materials in Australia*

The book commences with a fascinating chapter outlining the history of printed legal materials in Australia. The familiarity which most law librarians and researchers have with British published legal materials, going back to the sixteenth and seventeenth centuries, means that we expect the laws of Australia, produced in the eighteenth and nineteenth centuries, to be readily accessible on our library shelves. Castles challenges the foundations of that expectation, by noting that the publication of laws in the early years of Australian settlement depended on the existence of printing presses, and the ability of people to work them. He records that although a printing press was brought to Australia with the First Fleet, it was not until 1796 that a convict was found who could work the press.

As other printing presses gradually arrived in the Australian colonies in the early 1800s, newspapers were published, filling the dual role of providing news and publishing the laws and orders of the colonies. Hence our very first legal publications took the irregular and impermanent form of newspapers. Castles notes that these newspapers were popular in their time, especially amongst the bushrangers of Van Diemen's Land, who liked to be aware about the laws they were breaking.

The establishment of legislatures meant that there was a need for more formal publication of laws. Acts or ordinances (as they were variously known) were initially published in pamphlet form. It was not until 1827 that New South Wales first published three volumes of Acts and Ordinances. In the poorer, less populated colonies, volumes did not appear until many years later.

In tracking down colonial legislation, one of the great problems is the different numbering systems used in the Australian colonies. On p.xv of his chapter on Printed Materials, Castles gives an invaluable explanation of how the different Australian colonies numbered and cited their legislation, and traces these idiosyncrasies into the twentieth century.

The printing of court judgments proved even more difficult in colonial Australia than the printing of legislation. At least the publication of legislation was supported by government funds, but the publication of judgments was left to private enterprise, as was the case in the United Kingdom. With a small population, however, this was not a commercially feasible enterprise for some time, and accordingly efforts to publish court judgments of the early nineteenth century were sporadic and even when published, the results were often less than accurate. On p.xx of his chapter on Printed Materials, Castles describes the efforts made in each of the colonies to print reports of judgments.

The *South Australian Law Reports* appear to be the first long term, systematic series of law reports in an Australian colony, commencing in 1866. It should be noted, however, that they lapsed in 1892, and were not revived until 1899. The *Victorian Law Reports* followed in 1875 (although there had been a number of precursors to this series). The *Queensland Law Reports* commenced in 1876 and the *New South Wales Law Reports* commenced in 1880. The *Western Australian Law Reports* only just preceded federation, commencing in 1897, and the *Tasmanian Law Reports* did not commence until this century, in 1905. It is extraordinary to think that our published records of Australian jurisprudence extend little more than one hundred years, but this is indeed the case.

In the absence of published law reports, the newspapers played a very important role in publishing accounts of important cases. Some newspapers, such as the *Sydney Morning Herald* and the *Argus* treated court reporting as an important part of their role, and their accounts were relied upon by lawyers and judges alike. In addition to newspaper reports (or sometimes relying upon them), digests of cases were published towards the end of the nineteenth century, which included cases from the several colonies, thus giving a 'federal' perspective on law in Australia.

### *The Annotated Bibliography*

Castles' bibliography is quite extensive, containing 2558 entries. It is compiled alphabetically, primarily based on the author's name, but it also uses titles in the absence of an author. Some of these titles are rather obscure, and the bibliography would be rather inaccessible if it were not for the excellent index which collects all areas under subject and author headings. In addition, there is a separate Table of Cases, a Table of Law Reports, and a Table of Statutes, which will be of invaluable assistance for those seeking specific items.

The subjects of the entries range from accounts of court cases to parliamentary papers, legislation, and general pamphlets or texts on matters relating to the law.

Some of them are quite peculiar, such as the Government Order, issued by the Colonial Secretary's Office in 1831, on 'Traffic in Human Heads'. Apparently preserved human heads were in such demand by European museums, that people were being killed to ensure there was a ready supply for this lucrative trade.

The bibliographical entries are supplemented by annotations which often give brief biographical details of some of the more prominent legal or political identities of the age. In some cases references are provided to modern biographical works on these subjects. The annotations provide Castles with an opportunity to express his personal views on these characters. This lightens what might otherwise be a rather heavy tome, and invites browsing. For example, his annotation to the entry on Redmond Barry's 'Address and Opening of the Circuit Court at Portland' in 1852, reads in part:

Barry had an inflated view of his own ability and a penchant for self-publicity as evidenced in this and other publications of his speeches which he arranged from time to time.

The annotations also provide the historical context in which the material was used. In his annotation to the entry on Blackstone's *Commentaries on the Laws of England*, Castles notes that this was one of the few legal texts available in the early days of the colony, and was probably the only one available to Governor Bligh. Ironically, the relevant edition was edited by the brother of Fletcher Christian, who was better known to Bligh for his mutiny rather than obedience to the laws of England.

Although I enjoyed browsing through the book, I found it rather frustrating because it only covers half the problem in obtaining Australian legal material from the eighteenth and nineteenth centuries. It provides the full reference to the material, so the researcher can be assured that it exists, and is held somewhere in Australia (or perhaps the United Kingdom), but (on the whole) it does not provide information as to where it can be found.

This frustration may reflect the fact that I am a legal researcher, rather than a qualified librarian, and I am therefore rather intimidated by pages of references which do not specify where they can be found. Perhaps it is not the role of a bibliography to identify where material is held, and one should be grateful enough that the reference to the relevant work is provided so that its location can be identified through using the skills of professional librarians. Nevertheless, as the author has clearly gone to the great effort of tracking down this material in archives and libraries around the nation, I cannot help wishing that he had provided us with more of the benefit of his work by including the location of the rarer materials.

This criticism is alleviated to some extent by the useful annotations to some of the entries. An example is the annotation to the reference to Kingston's draft Constitution, prepared in 1891. It had previously taken me some time to hunt down a copy of this document, which does not appear to have ever been formally published. Castles' annotation would have saved me a lot of effort, as it records

that a copy is held in the Griffith Papers in the Dixson Library. However, other entries on Kingston, including his pamphlets on 'constitutional reform and household suffrage' are probably just as difficult to find, but no clue is given in the annotations as to where they are held

Many entries have no annotations at all, and appear tantalisingly elusive. Take for example the following entry:

*Colonist*, A Proposal for the Confederation of the Australian Colonies with Prince Alfred, Duke of Edinburgh, as King of Australia Melbourne George Robertson, 1867

The difficulty in locating material which relates to the formation of the Commonwealth Constitution is extraordinarily great for such a young nation. I recently spent several days trying to locate the minutes of the drafting committee of the 1897 Constitutional Convention, eventually locating them in the Commonwealth Archives in the outer suburb of Mitchell in Canberra. Much of this original material is scattered in archives around the country, some of it mis-catalogued, and some not subject to controlled preservation conditions. The Centenary of Federation Advisory Committee, in its report *2001: A report from Australia* recommended that these materials should be brought together, conserved and published. It supported the proposal of the Australian Archives and the National Library to republish facsimiles and annotated versions of important federation projects. Once done, this should eliminate some of the problems in this area.

Castles' *Annotated Bibliography of Printed Materials on Australian Law 1788-1900* will be useful in identifying some of these documents. More importantly, it will be a significant reference work to identify works on less glamorous areas of the law, which form an important part of our legal and social history, and which may still be instructive in interpreting law today.

[The author is a lawyer and an Officer of the Parliamentary Research Service of the Commonwealth Parliament. The views expressed in this article are the author's alone and should not be attributed to the organisation for which she works.]