
Constancy & Change: Moral and Religious Values in the Australian Legal System,
Keith Mason QC

The Federation Press, 1990
Recommended Retail Price \$25.00

This book represents the publication of a series of lectures delivered by Keith Mason QC, Solicitor-General for New South Wales and formerly Chairman of the state's Law Reform Commission. The lectures were given at New College at the University of New South Wales in October 1989. The book comprises five chapters, each of about 30 pages.

The first chapter is called "The Myth of an Inherently Christian Legal System" and the proposition which is developed is that law, like any other human system, is sustained and moulded by values which are those of the players in the system. There is an enlightening historical review and discussion of blasphemy in the context of the law compelling or encouraging religion.

The next chapter is entitled "Law and Morality: Intersecting Or Overlapping Circles?" and the author deals with a question which must present itself to every practising lawyer: the influence of personal values upon the processes of deciding legal questions. He singles out judging and discusses the declaratory theory and judicial activism. He turns up this remark from Sir Owen Dixon at his swearing in as Chief Justice which must graphically illustrate the change in emphasis over 40 years: "It may be that the court is thought to be excessively legalistic. I should be sorry to think that it is anything else."

"How Change (Reform?) Occurs and How To Block It" is the title of chapter three. He looks at the process of changing the law and how and why it is opposed. This provides some interesting insight into the working of a law reform commission.

The next chapter is called "From Establishment to a Burr in the Saddle: Organised Religion in Australian Legal and Political Affairs" and the author explores the interaction of moral and religious values on our legal institutions (and vice versa). There is a stimulating discussion of Australian political and religious history and an examination of why there has been a marked change in the status and role of the church in this country.

The final chapter has the title "'We All Make Mistakes': Coping with a Fallible Justice System" and after a discussion of the process of trial by ordeal which was well established for some seven centuries the author looks at the question of doubtful jury verdicts illustrated in particular by the Chamberlain case. He examines acknowledgment of the inevitability of error and how that is accommodated by the appeal process. He concludes with a call for improvement in the way in which the deeper needs of those of us participating in the justice system should be addressed suggesting that "we could learn to be better carers for each other in that part of our existence in which we paddle anxiously beneath the calm or severe service of our professional roles."

The book is very readable. There are frequent references to literature, scripture, legal history, anecdote and folklore. Theories are asserted boldly, supported by arguments and illustrated by example so that the book is substantial but far from turgid. It contains a dose of humorous and insightful

phrases descriptive of the institutions of the law and the church and their respective members. They carry weight coming from a faithful member of both. Two examples are -

"Perhaps the reason lies partly in the fact that the modern busy lawyer has few meaningful experiences outside legal practice."

"A great part of the time, skill and money of committed Christians of all denominations in Australia is directed to the protection of this wealth."

The author's professional career and religious viewpoint enable him to provide unique perspectives. These are sometimes delicately and carefully expressed: for example, on one page he discusses an issue "from a secular viewpoint" and then "from a more sacred stance".

The book is learned, balanced, stimulating and well worth reading, particularly if one is a practising Christian, or at least, interested in an examination of law, morality and religion in an Australian context. □ Richard Cogswell

Forensic Science and the Expert Witness,
J.H. Phillips and J.K. Bowen

The Law Book Company, Revised Edition; Soft Cover
Recommended Retail Price \$29.50

In the largest part of this short work the authors explain the major areas of forensic science; from attending the crime scene to the expert evidence given in court. Individual chapters outline the principal methods employed by experts to reach opinions or conclusions, and each is a valuable introduction to the area of specialty. The discussion ranges from the prosaic such as continuity of exhibits to ghoulish descriptions of flesh wounds from revolvers, rifles and shot guns. Each specialty is described in turn, usually with a glossary of terms included. Of particular interest to barristers are such Rumpolesque subjects as blood and typewriters as well as handwriting, tools, paints, explosives and photographs. The sections on firearms and fingerprinting have interesting historical introductions. There is also a brief introduction to the new genetic fingerprinting techniques. Further reading lists are provided to start the search for more detailed knowledge, if necessary. The text is invaluable for its store of information so it is a book you would turn to if you wanted to identify a "choked shotgun"; or discover how an expert detects "disguised handwriting"; or learn how to catch a safeblower with a botanist. The text is written in a concise and readable style, and interest is maintained with useful and colourful examples drawn from real life.

In a separate part of the book the authors deal with the respective roles of the lawyer and expert witness in preparation for court and the giving of evidence. These parts of the text will be of particular assistance to witness and lawyer alike.

A recurring theme through the text is the poorly defined role of expert witnesses in the adversarial system. Are they advocates for the cause of the party calling them? Do they owe an independent duty to disclose information to the court which is against the interest of the party calling them? This brief text does not attempt to answer but by discussing real cases, thoughtfully poses the questions for the reader's consideration.

Lawyers, expert witnesses and others associated with forensic investigation will find this a handy and interesting text.

□ James T. Kearney