

AUSTRALIAN CRIMINAL JUSTICE by Mark Findlay,
Stephen Odgers and Stanley Yeo, Melbourne, Oxford
University Press, 1994, 374pp i + xvi, \$35.00,
ISBN 0 19 553487 S

Mark Findlay, Stephen Odgers and Stanley Yeo have achieved their objective of introducing the Australian criminal justice system to the reader "warts and all" (p7). *Australian Criminal Justice* does more than merely describe the rules which apply to the system. It looks at "what police do, what judges say, and how people are punished" in Australia. The authors have set themselves a formidable task and the result is an amazingly manageable, informative and readable exposition of the criminal justice system as it operates in Australia.

Many of the current books on criminal law tend to concentrate on substantive law or procedural law or the laws of evidence and few address social issues in any depth. On the other hand those which address the area of criminal justice tend to look at particular issues or themes. This book attempts to combine both approaches. It provides a link between the substantive and the operational features of criminal law and criminal justice. It gives a simplified rather than a simplistic view of the theoretical and operational features of criminal justice in Australia. What the reader obtains is an overview and general picture of the system as a whole.

However, the authors make it quite clear that the unified system of criminal justice in Australia implied by the title of the book is an illusion rather than a reality. The authors indicate that it is only on a general level that we can discern a system and that the closer we examine it the more differences and contradictions we may perceive. To present what Kirby J describes as a mosaic (pxi) the book brings together many themes and observations which have been made in a variety of ways, in a variety of situations and by a variety of people. The authors weave these together so that we may understand that even though there may be criminal laws rather than a criminal law there is on one level a distinguishable system. The authors illustrate and explain how each component interacts and impacts upon the other. The changeable nature of the law is apparent. Functions, rules, operations and impacts are all enmeshed and the book seeks not to dissect the system but rather to show how it is constructed and to provide a conceptual framework for a greater understanding of it. It is on this level that the nomenclature system is not inappropriate. As said, the closer one looks at it the less unified it becomes, the more the differences become obvious and the more the dynamic nature of criminal law and justice becomes apparent. Perhaps the system may be described as a kaleidoscope rather than a mosaic.

The structure of the book is orthodox in that it starts with the general principles of criminal responsibility. Subsequent chapters examine the usual features of the system, that is, investigation, pre-trial, the trial, sentencing and appeals. However, there are welcome additions to these. The authors have included a chapter on what they identify as being new inventions in the investigation of crime and so give the reader a more realistic picture of the investigatory process.

The inclusion of a chapter on rules of evidence may be seen as another feature which sets this book apart from the usual texts. The authors provide an excellent introduction to the rules of evidence which demystifies an area which can be exceedingly complicated. They neatly encapsulate what evidence is when they describe it as "... a mixture of rules (with exceptions) and discretions" (p155). Thus the rules of evidence are not presented as a collection of unrelated and individual principles but are described in the context of their role in the criminal trial. Their impact upon the administration and outcome of the trial is examined and what are studied in substantive texts as artificial exceptions to the rules are given a theoretical [social] justification for their existence. Thus evidence becomes an integral and operative part of the whole process and not merely a set of arbitrary rules of the game.

The chapters, however, do not operate in isolation but are linked together by integrating themes. For the authors of this book, the major theme, justice, is not some abstract concept or unconnected critical comment. Rather they "... seek to introduce the problems and potentials for justice in a real world" (p4). They assert that facts not fictions make justice and what is meant by justice must be explored and examined in practical terms. The authors note that the concept of justice is the unifying feature of the book and it is this which prevents the work from being merely descriptive. Each feature of the system is measured by its performance in terms of justice. At each stage differences between the rhetoric and the operation of justice are exposed. Various themes combine to present a picture of criminal justice, to assist the reader in understanding the dynamic nature of the criminal law and the administration of criminal justice, and to stress the importance of understanding that each component of the system impacts upon and interacts with others.

Illustrations of this interweaving of themes are plentiful. For example the importance of the rules of evidence at the trial stage is tied with the roles of the police at the investigation stage. The links between the obtaining of evidence, particularly of confessions and its role in the trial is examined. Purely practical aspects of the process are addressed in an attempt to separate theory and reality. The fabrication of confessional evidence and the solution of recording of interviews is analysed with the adoption of the pragmatic conclusion that it may be open to speculation "whether the real objection of the police to tape-recording (though it is never avowed) is their fear of the consequences of public inspection of what happens in the interviewing of suspects" (p170).

Most commendable is the placement of the Australian system within the international human rights context. The relevant articles of the Universal Declaration on Human Rights provide the yardstick against which the Australian performance is assessed. The reader is introduced to an idea which is relatively recent in the study of criminal justice, namely, that an individual system can no longer stand alone, but that there is a growing ideal of national accountability on an international level.

The themes are drawn together in the final chapter, which in contrast to the earlier chapters, examines the impact of the criminal justice system upon particular groups. The goal of equality of treatment is identified as being important to any criminal justice system and the authors lament that "[t]he sad reality is that discrimination does exist in our criminal justice system" (p260). The basis of this is explained as an imbalance in power between groups within society. The authors select five groupings within society which may have

been subjected to unequal and discriminatory treatment either intentionally or through the operation of the criminal justice system. The groups that are selected are juveniles, Aborigines, women, the intellectually handicapped and corporations. The apparently anomalous inclusion of corporations is ostensibly justifiable because as a powerful group they have been able to use the criminal justice system for positive discrimination and have been advantaged rather than disadvantaged by its operation.

By using a thematic approach the reader gains an insight into the differences between principles and practice, what is said and what is done and the public face of the administration of justice and the private execution of that justice. By addressing the differences and similarities, as a way of explanation, rather than merely as a comparison for its own sake, the authors contribute to an understanding of the reality of the operation of criminal justice in Australia.

A reader who wishes to gain a detailed understanding of a particular issue would be wise to consult a text written for this purpose and the legislation relevant to her/his jurisdiction; for the book deliberately limits itself to a brief and general description of the law. Thus a welcome inclusion in the book is the comprehensive bibliography which provides an invaluable research tool for students trying to find their way through the maze of what is called the criminal justice system.

The book complements the existing texts on criminal law and criminology. For the student of "black letter" law it gives an understanding of the social issues involved in the application of the law. The criminology or legal studies student will gain an understanding of the legal rules which are applied in the administration of criminal justice. It is a welcome addition to the literature in this area.

BRONWYN BARTAL*

* Lecturer, University of Melbourne, Law School.