

## **Book reviews**

**CRIMINOLOGICAL MATERIALS IN THE PARLIAMENTARY PAPERS OF AUSTRALIA AND NEW ZEALAND FROM 1901**, by Stephen White and Audrey Edwards, Department of Law, Research School of Social Sciences, Australian National University, Canberra, 1977, xi + 243 pp. Reviewed by Neil Cameron.\*

Although there are a number of obvious exceptions it would be true to say that in general criminologists are not particularly strong on either history or politics. Instead their attention tends to be firmly fixed on the present and on the explanation and treatment of the modern offender. History, when it is considered at all, is used largely to provide useful precedents and justifications, an illusion of scholarship or interesting titbits on the queer habits of our ancestors. This general lack of an historical perspective has been compounded by social historians who have, again with notable exceptions, largely ignored the history of crime and of the elaborate structures that societies have constructed to define, process and punish criminals.

It is of course true that the development of political criminology over the last fifteen years or so has gone some way towards redressing this balance. Nevertheless it is still painfully evident that we have scarcely begun to plumb the depths of our ignorance in this area. As the compilers of this immensely useful volume point out in their preface the amount of good, published or at least reasonably accessible historical research on crime, criminals, the criminal justice system or even the penal system in Australasia is minimal. As far as New Zealand is concerned the number of books, articles, monographs and theses with any appreciable historical content can be counted easily on the fingers of both hands. Even then the best known piece, P. K. Mayhew's history of the penal system up to 1924, is essentially a preliminary foray which makes limited use of available published source material and which was, in any case, intended only for internal use within the Justice Department.

Insofar as this apparent reluctance to become involved in thorough-going historical research is the product of a lack of basic research tools, this volume

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should go a long way towards overcoming the problem. With its companion volume, which covers the pre-1901 material and which is still in preparation, it will provide an invaluable checklist for those considering or involved in historical research. In a strongly centralized country like New Zealand the sorts of parliamentary materials covered here provide a spectacularly rich hunting-ground for the criminologist/historian. This volume renders access to that area less painful and hence much more likely to be undertaken as a matter of course in criminological research generally.

In both form and content the checklist is simple and all-embracing. It covers the major core areas of traditional criminological endeavour and also the many emerging areas of interest. Thus while the bulk of the subject-headings relate to such obvious topics as crime, police, courts and prisons, there are also substantial sections on bankruptcy, consumer affairs, conservation, immigration, factories and some aspects of the public service. In assembling material on such topics the checklist draws on all printed parliamentary papers except debates, Acts, Ordinances, Rules and Regulations and reports of parliamentary committees emanating from the committee stages of the legislative process. To some extent, of course, this inevitable initial selectivity must adversely affect the usefulness of the publication. In the first place it is plain that much depends on the publication policies of the various governments involved. For example, insofar as New Zealand is concerned the checklist makes no mention of the two reports on Paremoro Prison prepared by the Ombudsman and by the Ombudsman and Mr L. G. H. Sinclair, S.M., in 1972 and 1973. These reports, which are vital to an understanding of the New Zealand prison system, were never published and hence could not be included in a volume of this sort. In the second place it is also unfortunate that the omission of any reference to relevant debates, legislation or, for example, reports of parliamentary select committees, also serves to deprive the intending researcher of valuable information. While no one could sensibly suggest that a checklist of this sort should include reference to debates and the like the omission of committee reports is serious and could have been avoided. Thus, for example, in 1974 the Statutes Revision Committee investigated and reported on the Police Offences Act 1927 with a general view to reform but without any actual legislation being before the House. That report was published and should have been included in this volume. Similarly since that time we have had a series of parliamentary and Cabinet committees on such areas as gangs, the family, violent offending and drugs. The reports of such bodies, if and when they are published, are plainly of central concern to future criminological researchers yet they scarcely fit into the classification adopted by the compilers of this volume and seem likely to be ignored in future editions.

The mass of material culled from the parliamentary papers has been divided into two, or in the case of New South Wales and New Zealand, three categories depending on its source. These categories have in turn been sub-divided into a number of discrete subject headings covering most areas of criminological concern. The first category consists of the annual reports of government departments and of statutory bodies like parole boards, licensing trusts, etc. The second deals with Royal Commissions, inquiries, returns, papers and, for most jurisdictions, petitions. In New South Wales and New Zealand, however, the

petitions are so numerous that they have been accorded a separate category of their own.

The last category, and the need for it in only two out of the eight sets of material indexed, illustrates quite clearly the value of this volume as an inspiration to and initiator of research in addition to its more conventional role as a research tool. Thus the section on petitions provides a graphic example of a simple cross-cultural comparison that demands investigation. It is plain that, at least in the early years of this century, New Zealand made very heavy use of the petition procedure. Between 1901 and 1974 well over 700 petitions were presented on topics covered by this index. Our nearest rival, New South Wales, managed only around 200 in the same period and even then most involved liquor. Even a simple content analysis of the material would be invaluable and would pave the way to more fundamental questions concerning differences in political style and the like.

In short, then, this is a work that is essential for anyone who is interested in serious criminological research in Australasia. It will undoubtedly fulfil the dual function of research tool and inspiration to research that its compilers intend for it. But it is much more than a mere aid to criminologists. There is much material here that will be of value to the social historian, the political scientist and the lawyer concerned with parliament, administrative law, labour law and even company and consumer law. For such users the checklist plainly needs to be heavily supplemented by other sources but it cannot fail to be of some assistance and interest. One can only hope that the appearance of this volume will encourage the preparation of other specialist works of this sort and that this volume itself will be extended and updated in future years.

**LAWYERS**, by Julian Disney, John Basten, Paul Redmond, and Stan Ross, Law Book Co. Ltd., 1977, xliii + 758 pp. including index. Australian price \$28.50 limp. Reviewed by Anthony H. Angelo.\*

Congratulations to the writers of this book — it is excellent cover to cover. Most questions asked about the law profession find answers here as do a great number of questions not usually asked. Teaching about the profession is not always an easy or well received occupation but with this book a course on lawyers should be a pleasure to student and teacher alike.

Although basically a set of materials the text is so well integrated by author commentary and sets of notes and questions that it transcends its origins and becomes a book to be read as well as a teaching tool.

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Lawyers are discussed, explained and portrayed in detail in the several jurisdictions of Australia. References are frequently made to the relevant Common Law and developments in other countries, principally England, Canada and the United States. Beyond the inclusion for Australian purposes of cases such as *Rees v. Sinclair*,<sup>1</sup> and *Robinson & Morgan-Coakle v. Behan*<sup>2</sup> New Zealand does not figure in the book. However the text is still of great interest to the New Zealand profession because of the shared heritage with Australia and is only slightly less relevant than it might have been with specific detail of the New Zealand situation.

The book is divided into three parts and fourteen chapters. Part I, "Structure of the Profession", treats of the history of lawyers in Australia and shows the forces at work in the moulding of the present day profession, the divisions of functions within the profession, the profile of the professions (a who, why, where, and how of lawyers), admission and discipline. Part II deals with the "Delivery of Legal Services" and includes chapters on advertising and specialisation, fees, legal aid, and lay persons. Part III is called "Lawyer and Client"; it discusses a lawyer's general duties to his client, conflicts of interests of various kinds, candour and fairness, and, finally, decorum and respect in and out of court.

A high standard of presentation is maintained throughout. The reader is never in doubt as to what material is commentary and what is extracted from elsewhere. Printing errors are rare.

Of the few general criticisms that can be made one relates to pressure on the eye. Perhaps it is inevitable in a work of this magnitude but it is a fact that continuous reading can be hard going. Author comment is set in an acceptable type size, extracts from other works are in a smaller type, and footnotes, notes and questions in an even smaller type — all this results in some densely printed pages. One other general comment relates to the section on pages 652 to 654 on "Acting as a Witness". The section contains only one case reference, and that in a footnote. Given the comprehensiveness of the book generally the citation of *Hutchinson v. Davies*<sup>3</sup> at this point would, it is suggested, have been appropriate.

The selection of materials is such as to give a new direction and focus on the topic. A world peopled with McKenziemen and others is made alive; the paralegals, and the professional implications of non-qualified staff handling large sections of a solicitor's business are covered, the benefits of employing a social worker in a busy law office are explored; interesting sidelights are thrown on the duty to accept work and its relationship to unpopular causes and clients and the lawyer's livelihood. Through the text the profession provides a commentary — not always a happy one — on itself.

This is a book with a magic of its own. Along with the facts and figures to be expected in such a text there are many gems: the antique<sup>4</sup>

There are many employments in life not unfit for female characters. The profession of the law is surely not one of these. The peculiar qualities of womanhood, its gentle graces, its quick sensibility, its tender susceptibility, its purity, its delicacy, its emotional

1 [1974] 1 N.Z.L.R. 180.

2 [1964] N.Z.L.R. 650.

3 [1940] N.Z.L.R. 490.

4 P. 185, quoting from *Re Goodell* (1875) 39 Wisc. 232 (Wisconsin Supreme Court) where a woman applicant was refused admission to the bar.

impulses, its subordination of hard reason to sympathetic feeling, are surely not qualifications for forensic strife. Nature has tempered woman as little for the judicial conflicts of the court room as for the physical conflicts of the battlefield. Womanhood is moulded for gentler and better things, and it is not the saints of the world who chiefly give employment to our profession. It has essentially and habitually to do with all that is selfish and malicious, knavish and criminal, coarse and brutal, repulsive and obscene in human life. It would be revolting to all female sense of the innocence and sanctity of their sex. Shocking to man's reverence for womanhood and faith in woman, on which hinge all the better affections and humanities of life, that woman should be permitted to mix professionally in all the nastiness of the world which finds its way into courts of justice. All the unclear issues, all the collateral questions of sodomy, incest, rape, seduction, fornication, adultery, pregnancy, bastardy, legitimacy, prostitution, lascivious cohabitation, abortion, infanticide, obscene publications, libel and slander of sex, impotence, divorce, all the nameless catalogue of indecencies, *la chronique scandaleuse* of all the vices and all the infirmities of all society with which this profession has to deal . . . . This is bad enough for men. We hold in too high reverence the sex without which, as it is truly and beautifully written, *le commencement de la vie est sans secours, le milieu sans plaisir, et le fin sans consolation* [sic], voluntarily to commit it to such studies and such occupations.

the informative<sup>5</sup>

A solicitor had sexual intercourse with his client in a matrimonial case, after the decree absolute but before questions of custody and maintenance had been determined. The High Court held this conduct was reprehensible but fell short of unprofessional conduct rendering him unfit to remain upon the roll (*Bar Association of Queensland v. Lamb* [1972] A.L.R. 285).

the "telling it like it is"<sup>6</sup>

When we stumble into the courtroom nightmare, designed as it is to baffle and confuse you, it is no wonder most of us are scared and timid, and do whatever the old dinosaurs in wigs and gowns advise us to do. Lawyers are so buried in all this legal bullshit that they have a fine record of selling our interests down the river and conning the innocent into pleading guilty. In the courtroom the defence is heavily leant upon to play the game the way it has always been played. This makes your lawyer suspect, so don't take what he says for gospel.

and a prophetic look at legal advertising<sup>7</sup> where the punch line in relation to medical negligence might read

Remember: if the condition persists, see your doctor. If it still persists, see us.

or in relation to divorce advising

. . . give us a call . . . you have nothing to lose but your spouse.

This is a book to have and to read. It is a reference work, a commentary, and a text. Further, with the extensive examination<sup>8</sup> of the courts and lawyers being undertaken in New Zealand today, its appearance could not be more timely.

5 P. 226 Note 3.

6 P. 485, quoting from *Up Against the Law*, issue No. 2 (1974), 15.

7 Pp. 274-275, quoting Gillers, "The Advertising Lawyer" *New York Times Magazine*, 2 May 1976, 103.

8 See in particular *Report of Royal Commission on the Courts* (Wellington, 1978).

