



BOOK REVIEW

LAWMAKERS AND WAYWARD WHIGS by *Alex C Castles and Michael C. Harris* (Wakefield Press, Adelaide, 1987) pp xv, 404

I'm not sure for whom this book is written. I'm a historian more than anything, and so when I was sent the book to review I assumed it would be for historians and/or lay readers in general. Both will find in the book much to inform and to entertain, but it is not really for them. The theme, broadly the evolution of a distinctively South Australian body of law and legal and constitutional practice, is too loose and, as the authors themselves say, too selectively treated. Perhaps, I thought next, the book is for law students? Its subtitle, 'Government and law in South Australia 1836-1986', suggests that. Law students will benefit too, but \$50 hardcover or \$40 paperback seems too much to ask even of them. Who is left? Lawyers themselves? The people in the title, Lawmakers and Wayward Whigs, whether that means one group or two? These people should indeed like the book — it has about it the smack of dipping into the past much like rifling a shelf of volumes searching for precedents in case law, it has the lively, enquiring, witty and chatty speculation which can engage lawyers off duty, and it has the selection and repetition of telling examples to make points in argument, much as barristers do. I'm sure the legal fraternity will enjoy the authors' restraint and commitment, their tongue-in-cheek barbs and their forthright opinions. I don't doubt that lawyers will delight in many legal nuances and niceties lost on me. But I must keep to my trade, and state as a historian what I think of this book.

There are eleven chapters, chronologically and thematically arranged, and essentially fired by the perennial confrontation between change and precedent. After a first chapter on Aboriginal law, the book divides into three periods: 1836-1856, 1856-1901 and 1901-1986. In each period, separate chapters consider law and government. The law chapters trace the slow strengthening of home-grown laws, court practice and powers, and legal training and conventions in the face of colonial and imperial precedent. The government chapters follow changes in the relative powers in South Australia of the colonial, state, imperial and federal governments, especially in respect of the governor and of the Legislative Council.

In a large sense the book is therefore about the growth of genuinely independent and democratic institutions in South Australia. In relation to this theme, a state is of course in an invidious position, for more often than not the states have gained powers from the imperial (British) government, only to see them taken by the federal government. Independence and democracy are national rather than state ideals in Australia.

As well, I suggest that the authors' whiggish presumption of a triumph of democracy in South Australia's past and future is indeed wayward. Despite a succession of forward thinking and influential individuals, both government and law in Australia have been followers rather than leaders in reform, more often than not dragging unwillingly behind the coat tails of popular opinion for change. What struck me in this account of the rise of home-grown powers and practices was not how much and how quickly, but how little and how slowly. The authors are aware of this — I suspect that is why they focus on such inert institutions as the governorship, the Legislative Council, and the higher courts — but it has not turned them from their theme. It is also true that South Australia's recent outlook and achievements have been against the conservative trend, but if anything this should warn of the need for vigilance against a conservative reaction. Perhaps a book about privilege rather than democracy would have been more appropriate: that would have required a fundamental change in the authors' outlook, but only slight changes in their phrasing.

Of course a reviewer's personal opinion will not undermine what this pioneering work has done. The authors point out that little South Australian history is being written at their workplace, the University of Adelaide, and that this has exposed their own writing to 'impression, generalisation and ... arbitrary selection' (p xiii). These are indeed defects in the book, but the authors have done well in containing them, essentially by unifying their discussion via entertaining anecdotes and commentary. In earlier chapters this takes the form predominantly of accounts of the lives, foibles, scandals and ideals of lawyers and politicians, and there are excellent sketches of men like Cooper, MacDonnell, Boothby, C C Kingston, Way and perhaps above all Richard Davies Hanson, here admirably rescued from the mists of forgetfulness. In later chapters these accounts are usually replaced, no doubt of necessity, by full but incisive opinions on points of law or the theory or practice of government. For me the style is sometimes too wordy — pruning superfluous adjectives would have saved a few trees, but the approach works admirably in making basically dry material digestible. The task of bringing forward dull but crucial information in a way which will provoke thought, discussion and action could hardly have been better done.

The first chapter, 'The Aborigines and their Law', stands apart from the rest of the book, in content, theme, and argument. It is in my opinion the best integrated and constructed chapter in the book. It argues first that there was such a thing as Aboriginal law (although that is something which only lawyers would debate now), then discusses such issues as the status of custom, the legitimacy of the *terra nullius* doctrine applied against the Aborigines, and Aboriginal experiences under European law — or rather government. On the *terra nullius* doctrine, it is interesting to compare what Castles and Harris say with Henry

Reynolds' opinions in his recent book, *The Law of the Land*. This is a valuable chapter.

The book also has 57 illustrations, 35 of them depicting lawyers or politicians, a good index, and notes on sources rather than endnotes or footnotes. These notes leave the text free for the general reader, and serve as a very useful bibliography, particularly of legal and political secondary sources, but their arrangement makes it difficult to source particular statements in the text, and they omit authors' first names and initials, which will sometimes make searching a library catalogue tedious.

In sum, despite its flaws, this book is a considerable pioneering achievement. It traverses subjects critical to South Australia's well being, blends legal discussion with entertaining anecdote, and offers opinions and sounds warnings with clarity but restraint. I stated in beginning this review that I am not sure who the book is for. But what the authors are striving for will benefit history, law, and South Australians at large, and I look forward to their next achievement.

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LIST OF BOOKS RECEIVED

(Inclusion in this list does not preclude review in a later issue.)

- ARMSTRONG, M, GREY, L et al *Communications Law and Policy in Australia* (Butterworths 1987) looseleaf \$275 (ISBN 0409493759).
- ARONSON, M and FRANKLIN, N *Review of Administrative Action* (Law Book Co 1987) pp lxvii, 720, soft \$67.50 (ISBN 0455207224).
- BERLINS, M and DYER, C *The Law Machine* 2nd edn (Penguin 1986) paper \$12.95.
- BLAKENEY, ML and McKEOUGH, J *Intellectual Property: Commentary and Materials* (Law Book Co 1987) paper \$59.50 (ISBN 0455206953).
- CARNEY, T *Drug Users and the Law in Australia: From Crime Control to Welfare* (Law Book Co 1987) pp lxi, 390, paperback \$42 (ISBN 0455207143).
- DEVLIN, P *Easing the Passing: The Trial of Doctor John Bodkin Adams* (Faber and Faber 1986) pp 236, paperback \$18.95 (ISBN 0571139930).
- ELY, J & R (eds) *Lionel Murphy: The Rule of Law* (Akron Press 1986) cloth \$35 (ISBN 0959066624), paper \$17.95 (ISBN 0959066632).
- ENRIGHT, C *Studying Law* 2nd edn (Branxton Press 1987) hard (ISBN 094960903X).
- FINN, PD (ed) *Equity and commercial relationships* (Law Book Co 1987) pp xxvii, 320, hard \$54 (ISBN 0455207259).
- GIFFORD, T *Where's the Justice? A manifesto for law reform* (Penguin 1986) paper \$9.95.
- GRABOSKY, P (ed) *Government Illegality* (Australian Institute of Criminology; Seminar Proceedings No 17, 1987) (ISSN 08137005).
- GRABOSKY, P and BRAITHWAITE, J *Of Manners Gentle: Enforcement strategies of Australian business regulatory agencies* (Oxford University Press 1987) paperback \$17.50 (ISBN 0195546903).
- GREIG, DW and DAVIS, JLR *The Law of Contract (Law Book Co 1987) hard \$95, soft \$69 (ISBN 0455206201)-9d-*
- HATTY, S (ed) *National conference on domestic violence* (Australian Institute of Criminology, Seminar Proceedings No 12, 1986) two volumes (ISBN 0642102473).
- HAZLEHURST, KM *Aboriginal Criminal Justice* (Australian Institute of Criminology 1986) soft (ISBN 0642101973).
- JESSEP, O and LULUAKI, J *Principles of Family Law in Papua New Guinea* (University of Papua New Guinea Press 1985) soft US\$9.95 (ISBN 9980840137).
- KING, MS *Natural Law and Consciousness* (Gantheaume Press 1987) pp 89, soft \$8.95 (ISBN 0958861013).
- MOLOMBY, T *Spies bombs and the path of bliss* (Potoroo Press 1986) pp 415, hardback \$24.95 (ISBN 0949764043), paperback \$14.95 (ISBN 0949764035).
- MUGFORD, J (ed) *Alternative dispute resolution* (Australian Institute of Criminology, Seminar Proceedings No 15, 1986) (ISBN 0642111316).
- MUKHERJEE, SK et al *The size of the crime problem in Australia* (Australian Institute of Criminology 1987) (ISBN 0642112037).
- NSW LAW REFORM COMMISSION *In Vitro Fertilization* (LRC, Artificial Conception Discussion Paper 2, DP 15, 1987) pp 189, soft (ISBN 0730544419).

- NSW LAW REFORM COMMISSION *Limitation of actions for personal injury claims: Report* (LRC 50, 1986) 89pp (ISBN 073052535X).
- POTAS, I (ed) *Sentencing in Australia* (Australian Institute of Criminology, Seminar Proceedings No 13, 1987) (ISBN 0642109958).
- REYNOLDS, *The Law of the Land*
- SHARPE, J M *The Administrative Appeals Tribunal and Policy Review* (Law Book Co 1986) pp xxvi, 232, hard (ISBN 0455206805).
- SNASHALL, R (ed) *National conference on child abuse* (Australian Institute of Criminology, Seminar Proceedings No 14, 1987) (ISBN 0642113079).
- WALKER, G deQ *Initiative and Referendum: The People's Law* (Centre for Independent Studies 1987) pp 220, soft \$16.95 (ISBN 094976924X).
- WALKER, J and BILES, D *Australian community-based corrections 1985-86: Results of the first national census* (Australian Institute of Criminology 1986) (ISSN 08186618).
- WALKER, J and BILES, D *Australian Prisoners 1985* (Australian Institute of Criminology 1986) soft (ISSN 08132364).
- WEDDERBURN *The Worker and the law* 3rd edn (Penguin 1986) paper \$29.95.
- WILSON, P and DALTON V (eds) *Review of Australian Criminological Research 1987* (Australian Institute of Criminology 1987) (ISSN 08113939).
- ZINES, L *The High Court and the Constitution* (1987 Law Book Co) pp xxiii, 423, hard \$62, soft \$45 (ISBN 0409491780).