

Review

John Braithwaite (2000), Collected Essays in Law Regulation, Crime and Freedom, Ashgate, ISBN 0754620050

John Braithwaite is a Professor in the Research School of Social Sciences at ANU. In this capacity he has co-ordinated interdisciplinary networks *Reshaping Australian Institutions* and *Regulatory Institutions Network*. He has also been active in social movement politics and was on the *Economic Planning Advisory Council* between 1983 and 1987.

This work is a collection of essays that forms part of a series by the publishing house to make available the important work of scholars who have made a contribution to a study of law.

The author chooses those essays that reflect the author's most important work. As the essays contained in this volume span more than 20 years of writings of the author, its interest is not only in the content but in the development of Braithwaite as a thinker and contributor to policy and ideas, particularly in the arena of reform in relation to corporations. While some of the essays are somewhat dated in their relevance today, the interest for the reader remains.

Braithwaite has been a social advocate for various social movements, particularly active in the areas of consumer, environmental, development and labour movements and he offers to those interested in pursuing justice in these arenas expertise in the limitations and abilities of current knowledge and strategies to regulate industry and organisations.

His first section *Dimensions of Inequality* consists of five essays examining profiles of criminal behaviour, with crime rates and delinquency examined in the more traditional view of criminal behaviour through to corporate and white collar crime, and the consequent difficulties in attempting to control and regulate corporations within a national framework. He argues, for example, that enacting legislation that attempts to regulate corporate misbehaviour salves the social democratic conscience but that reformers would have to agree that enactment is easier than enforcement; the actual cost of investigation and prosecution with lengthy trials and unsuccessful outcomes often the reality.

In more extreme cases of corporations that develop practices that cause harm to the citizens, a crackdown by government simply moves the harmful practices to the third world.

The last essay in this section examines a republican model of criminology and concludes that Australia's most serious crime problems of domestic violence, white collar crime and drunk driving have not been given the priority in crime investigation, prevention or punishment. Braithwaite concludes this is because of the political structure of the community that gives power to men and because of the economic power of those in command in our society. This essay published in 1995 should be compulsory reading for legislatures who adopt *three strike* policies for minor property offences yet fail to reflect the same degree of zealous pursuit against those causing the greatest amount of harm in the community. However Braithwaite would argue that it is actually the community, and not the legislature, who should take responsibility for the failure to attack the structural roots of particular causes of crime.

In his second section the author writes of corporations and the effect of non-compliance with law for both the community and the corporations themselves. Braithwaite points out that corporations often make decisions that result in non-compliance with a number of laws. As part of risk management a corporation may decide that the cost of compliance is far greater than the cost of a risk and therefore wittingly undertake that risk without a perceived value on the effect of the risk on the individual.

He further claims that a legal environment that allows for self regulation that will be exploited by the corporations. However Braithwaite's argument is the reality of imposing strict punishments on business for failures without an environment that involves persuasion rather than punishment will result in corporations adopting strategies to avoid detection rather than changing practices. This 'big stick' approach to criminal behaviour works at every level according to Braithwaite, but it is his interest in corporate regulation and the reality of the power of the corporation to evade consequences that makes such an argument a compelling one because of the enormous effect on our society caused by this law breaking and evading.

The third section deals with Republican legal institutions. The paper that addresses the role of the courts in reflecting community values in its appellate work is of particular interest in today's debate about whether judges should 'make' the law or simply enforce it. Of course as Braithwaite is quick to point out, there is a fundamental difference between community values and community attitudes. If the courts' adoption of community values is recognised and accepted as a framework for decision making, then Braithwaite argues that judges must implement their decision making process taking into account values that have been properly determined and researched. Of course as he claims, a Bill of Values and Rights would also ensure a reference framework properly determined and changed by the legislature.

Finally Braithwaite examines the idea of restorative justice. As Braithwaite himself says in his Introduction, this is about:

'helping [I]ndigenous community justice to learn from the virtues of liberal statism -- procedural fairness, rights, protecting the vulnerable from domination; and helping liberal state justice to learn from the [I]ndigenous community justice - learning the restorative community alternatives to individualism.

Braithwaite's model for restorative justice is the same model that has been trialed in North America, New Zealand and some states in Australia in family conferencing for juvenile offenders. Braithwaite argues cogently that this model will achieve a reduced crime rate, but not only that, it will lead to better citizens and add more meaning and hope into damaged lives.

Braithwaite's collection of essays is an easily accessible work. It should be compulsory reading for all those who have an interest in criminology, whether they are enforcers, legislators or practitioners. But, as community members, all of us have an interest in ensuring our society works towards justice and equality, and the ideas that Braithwaite has developed over his academic life and their application to crime and enforcement show a compassion and care for such a society. My only complaint about the compilation is that the publisher did not reset the type for the various essays, and more frustrating for the reader, some pages were actually missing.

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