

# Review

***The Teaching of Criminal Law: The Pedagogical Imperatives* by Kris Gledhill and Ben Livings (eds.), Routledge, 2017, 212 pp (ISBN 978113841994; 9781315731902 (ebook))**

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## Introduction

*The Teaching of Criminal Law* is an edited collection of 16 essays by 24 criminal law teachers from New Zealand, Australia, England, Ireland and Northern Ireland. While the essays are many and varied, the central messages of the book are clear. First, the collection suggests that criminal law teachers have choices when it comes to what and how to teach. Second, several contributors, along with the editors, argue that criminal law teachers have a responsibility to reflect on whether their classes are fit for purpose, drawing from something more than anecdote and intuition. The editors, Kris Gledhill and Ben Livings, begin the collection by voicing a suspicion, seemingly borne out by a review of course synopsis, that little has changed in criminal law teaching over the last 25 years (pp. 1–2). The aim of the book is therefore to provoke change in criminal law teaching.

These messages are conveyed in the arguments advanced as well as through the sheer ‘critical mass’ (Gledhill & Livings 2017, p. 9) of the collection. The contributions serve two purposes. First, each chapter presents theses bound to provoke debate and reflection among criminal law teachers. Second, each contributor serves as a role model, demonstrating what is possible within the realm of criminal law. The contributors are accomplished academics who, this collection would suggest, take their role as criminal law teachers seriously (Bradney 2017, p. iv). Put simply, their efforts suggest that teaching matters. External pressures and homogenising forces such as neoliberalism are acknowledged within the collection (see, for example, Loughnan 2017). The insights the book provides into dynamic classrooms across continents nonetheless suggest that strong pioneering efforts can prosper in the current environment. Only two contributors, in their chapter on the teaching of crime and criminal process at Queen’s University Belfast, speak of the phasing out of their ‘non-traditional’ and popular criminal law course (Scraton & Stannard 2017, p. 135). They explain that it was phased out as part of broader reforms of the first year to include more instruction in professional skills. They suggest that the reformers did not investigate or fully appreciate its innovative qualities or the strong reception it received from students. On the whole, the essays therefore inspire and encourage law teachers to be bold and intellectually ambitious by demonstrating what is possible within the discipline (Bartie 2014).

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### **Taking legal education seriously**

In the foreword to the work, Anthony Bradney argues that legal education scholarship ought to be as rigorous and robust as scholarship in any other legal field (2017, p. iv). To be worthwhile, anyone writing on legal education should have considered the history of legal education, the major theoretical and jurisprudential currents that have influenced both the teaching and practice of law, the role of law schools and universities in society, the 20<sup>th</sup>-century debates on legal education, current institutional arrangements and the various forms of legal education that occur beyond universities. I agree with Bradney that, taken as a collection, this book largely demonstrates such richness and sophistication.

Housed in law schools, those who write on this topic will be prompted to consider objections to their positions simply when walking down the corridor or visiting the tearoom. They write for audiences who, consciously or subconsciously, hold views on the topic that they act out daily. Rather than ignoring this range of views, another clear strength of this collection is that the contributors heed the arguments made in other chapters. In some cases, this is done through candid acknowledgment of the other contributors who would not support their approach to teaching criminal law and by explaining that their approach is not suited to all classrooms and all teachers (Gans 2017, p. 96). This attitude is refreshing.

### **Matching concepts of law with pedagogic strategy**

The aims and central thesis of the book suggest that it has been written largely for criminal law teachers. However, many of the pedagogical issues discussed are not unique to the criminal law and should provoke reflection amongst law teachers of all persuasions. For example, all law teachers should consider the model of law teacher that is on display in this work. Contributors critique traditional methods, reconceptualise the criminal law based on doctrinal and theoretical knowledge and, in many cases, devise pedagogic strategies that they hope will provide students with the best opportunity to understand their concept of criminal law. Many elite United States legal scholars of the late 19<sup>th</sup> and 20<sup>th</sup> centuries, such as Langdell, Llewellyn and Hart and Sacks, rose to prominence by adopting a similar approach. This collection suggests that this agenda ought to be a mainstream concern of every committed law teacher.

The chapters by John Child, Fiona Donson and Catherine O'Sullivan, Kevin Brown and Colin Murray, Ben Fitzpatrick, Jo Boylan-Kemp and Rebecca Huxley-Binns give particular emphasis to the question of matching pedagogic strategy, including interactive technologies, to concepts of law. The chapters by Jeremy Gans, Thomas Crofts and Stella Tarrant argue that reframing criminal law courses as statutory interpretation courses poses a raft of interesting intellectual challenges that, when addressed, lead to new priorities, increased student comprehension and greater teacher satisfaction. Shane Kilcommins, Susan Leahy and Eimear Spain make similar points in their engaging chapter on the importance of teaching regulatory crime.

Another perhaps overlooked dimension of this book is that it provides a fascinating insight into how a variety of 20<sup>th</sup>-century legal theories have influenced, both consciously and subconsciously, the teaching of law. The contributors do not speak with a unified voice on the aims, content and methods involved in teaching criminal law and this, I believe, is in part a product of their broader theoretical commitments. While it is always dangerous to attempt to classify legal scholars, I will boldly suggest that represented in the collection are

ideas from American Legal Realism (Adam Jackson and Kevin Kerrigan and Scraton and Stannard), Critical Legal Studies (Alex Steel), Feminist Legal Theory (Julia Tolmie), Critical Race Theory (Khylee Quince) and Law and Society/Socio-legal Studies (Livings, Arlie Loughnan, Quince, Tolmie). Each of these chapters emphasise the importance of explaining to students the contextual and contingent nature of the criminal law and move into the more difficult terrain of what this means and how it is best done within the classroom.

### **Further inquiries and arguments**

Despite the variety and broad coverage, there are some gaps in this work that could be filled in future scholarship. Apart from the literature on pedagogical methodologies, little is said about contemporary thought. What, if anything, can criminal law teachers take from the frontiers of knowledge in other disciplines and how might that be built into modern conceptions of criminal law? Several contributors mention the role that criminology has played in setting disciplinary boundaries and constricting the criminal law curricula. However, none of the contributors fully explain what, if any, of the traditional boundaries ought to be maintained. It would be useful to have a richer explanation of how particular local conditions, or foreign transplants, have produced conceptions of criminal law teaching.

Some contributors resort to common generalisations about the history of legal education. This can be misleading. In my own research I have discovered that during the founding of modern Australian university legal education there were indeed pioneering law teachers, including criminal law teachers, who hoped to change the culture of Australia's legal profession. Did they teach in a way that most legal scholars would today find either useful or desirable? No. Most were liberal scholars who were excited by the prominent issues of analytical philosophy of their day and reacted to the state of social sciences in the 1950s. It is their aspirations for law teaching, rather than their concept of law, that should be better appreciated. Knowing that founding law teachers held ambitions to devise teaching strategies that might change the culture of legal practice is an indictment on subsequent law teachers who simply adopted decades-old practices. It suggests that they misunderstood the vast potential and responsibilities that several early law teachers associated with their role. In other words, the founding of modern Australian criminal law teaching lends further weight to the important argument that this excellent collection makes.

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