also cease to be the sole preserve of the legal profession. Professional law reform is no longer "a thing of shreds and patches" as Mr Justice Kirby so neatly quotes (page 39). But (to use the same source and to drop the irony of the original) if

> The law is [to be] the true embodiment
> of everything that's excellent,

or even anything remotely resembling that happy state, the tools of law reform, which are being developed apace in Australia, must be used to the full.

DOUGLAS J. WHALAN*

*In Pursuit of Justice: Australian Women and the Law 1788-1979* edited by JUDY MACKINOLTY and HEATHER RADI. (Hale and Iremonger, 1979), pp. i-xvii, 1-300. Cloth, recommended retail price $19.95 (ISBN: 0 908094 45 0); Paperback, recommended retail price $9.50 (ISBN: 0 908094 46 9).

*In Pursuit of Justice* is a collection of papers largely written for a seminar on Australian women and the law. Heather Radi notes in the introduction that "the papers were to focus on those areas where the law distinguishes between the rights and responsibilities of women and men. Where such distinctions exist discrimination occurs however impartially the law is administered". Gender-based distribution of rights is probably the popular definition of discrimination. But the more challenging aspect of this working definition is the identification of discrimination in the differential allocation of responsibilities, whereby the law operates by defining the context in which individuals act.

Beverley Kingston has observed that the law reforms of the early twentieth century, conventionally understood as "women's rights", can be interpreted as the middle class transformation of the world, a reformulation of the power of the state, which made increasing use of the category "woman" to define and control and order society bureaucratically.[1] This collection of essays focussing on "women's wrongs" extends, qualifies and sometimes cuts across this type of conceptual generalisation.

*In Pursuit of Justice* has no one unifying perspective on the function of the different modalities of law. Explicitly, the aim of the collection is to demonstrate the impact of the law on the lives of women from first settlement to the present. And "the law" is a subject of variable content. For example, Jude Wallace's chapter "The 'Red Tape' of Childcare"

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[1] Kingston, *The World Moves Slowly: A Documentary History of Australian Women* (1977) 53.

documents government regulation of childcare in Victoria, concentrating on the policies underlying styles of regulation and degrees of subsidy, choice of agency and administrative machinery. Legislation is one aspect of direct administration. By contrast, "Aboriginal Women and Colonial Authority" by Su-Jane Hunt ranges across the administration of the Master and Servant Acts, the criminal law and the Aborigines Acts of the period 1886-1905 in Western Australia to develop the thesis that "authority, as evidenced in the law represented officially by the police in the north, maintained European supremacy and the subjection of Aboriginal people. The law in the north had become the instrument of the landowning settler class. . . . The police as agents of the law fulfilled their role as law enforcers which was as protectors of settlers' interests and as moral guardians" (page 39).

I should immediately make clear that the point of the contrast is not to criticise either perspective on the interaction of law and social structure. On the contrary, this collection of papers gains strength from its unevenness, its deliberately scatter-gun approach to the retrieval of the history of women's lives. Feminist analysis of legal structures and their impact on women is rich and diverse, not yet settled into any one mode of explanation. The one constant in this analysis is an insistence that law cannot be understood solely in terms of itself and its stated objectives, that the categories of subject within which different modalities of law (criminal, civil, constitutional, administrative) claim privilege have a history of their own.

A good example of this approach is the chapter on Aboriginal women. Hunt argues that racist and sexist selective application of the criminal law and Master and Servant Acts was part of a strategy to maintain the labour supply of black women to the advantage of the settlers. Sexual exploitation of Aboriginal women by settler employers was condoned; abduction of women by itinerants and Asian pearlers was a matter for official intervention since it disrupted the settler economy. The thesis is not fully developed, even in outline, and leaves many questions open. Why, for example, were Aboriginal women not permitted to keep their children on the stations, but forced to surrender them to the Official Protector and the Missions? In other words, why was the logic of the plantation-type economy not permitted full development? Hunt gives the evidence of official concerns of protection and christianisation, but does not satisfactorily integrate this with the labour supply argument. But her central argument is compelling: laws developed for one purpose took different shape when applied to other ends, through the agency of the police.

To give the sense of why the disparate elements which make up this book are so exciting despite unevenness in approach and insight, it may be useful to survey briefly the range of concerns of feminist legal analysis. Recently there has been an emphasis on the central role of laws regulating sexuality for an understanding of the continued oppression of women. Rape, prostitution, abortion and fertility control, adolescent sexual "delinquency" and divorce become problematical. Some analyses proceed by identification of discrimination inherent in repressive laws

constraining women's sexuality: the double standard in divorce, criminalisation of the prostitute but not the client, the stigmatisation of rape victims by evidentiary strategies which put a woman's sexual history into question. Connections between female criminality and sexuality are explored for insights into the ways the law directly controls women in the maintenance of patriarchal power relations.

On these themes Portia Robinson's chapter "The First Forty Years" and Hilary Weatherburn on "The Female Factory" offer illuminating insights. Weatherburn's argument emphasises how the institutions of the penal colony contributed to the prevailing view of female convicts as vicious and depraved. Order and morality were synonymous in the colonial administration. Order meant the regulation of the female labour supply in conditions of extreme sexual imbalance, by the interaction of administrative measures and the manipulation of the legal options of coercion. Criminal law and penal policy collaborated to discipline servants. The threat of the female factory (a sort of prison-cum-poorhouse) was used to promote obedience, passivity and exploitation. Robinson develops a picture of an extraordinarily complex society, in which civil status (convict, free or freed) determined the legal status and rights of all the inhabitants, and the criminal law was used to determine social standards. Native-born and free women were also subject to the convict law, at least in the limited sense of its pre-eminence in the regulation of the "disciplined society" in which criminality and immorality were conflated for women.

In Australian feminist historiography the role of legislation and of administrative/judicial structures in the regulation of industrial relations has been a prominent theme.[2] The history of women's movement into and out of the paid labour force and the struggle for equal pay has provided illustrations of law-making by particular interest groups under the guise of progress. Chapters on "Equal Pay", "Respectability and the Outworker", "Superannuation and the Sexes" and the sacking of married women teachers in the 1930s, "To Stay or to Go", all stress the role of legislation and the arbitration system in creating and maintaining a sex-segregated workforce. These chapters identify paternalist protective motives in laws regulating women's work. Anne Marie Lynzaat, writing on female outworkers (women who worked at home on piece rates), goes furthest in developing an interpretation of the particular character of factory and outwork legislation as a means of restricting women's entry into the organised world of factory work. While the terrible abuses of the outworker system had provoked public alarm, the Parliament was more concerned to enable "respectable" women to remain at home while earning; the legislation had little to do with regulating competition in the interests of factory owners. Thus, an economic explanation should focus on the exclusion of women from factory work as the dominant feature of public policy.

The consequences of sex segregation in the labour market are taken up by Mary Gaudron and Michal Bosworth in their analysis of why the

[2] *E.g.* Ryan and Conlon, *Gentle Invaders: Australian Women at Work 1788-1974* (1975) and Daniels and Murnane, *Uphill all the Way* (1980).

successive "victories" in the struggle for equal pay needed to be repeated to establish the principle, and why the reality is yet to be achieved. Their useful summary of the arguments and outcomes of the equal pay cases in the Arbitration Commission in 1969, 1972 and 1974 is marred by a lack of analytical focus on the role of the union movement in the establishment of the award system of industrial regulation, which leaves the impression that victories were ephemeral because of imperfect strategies or bungled legislation. Only one short paragraph provides the wider perspective:

> While most women found employment in traditionally female work in the post-war decades, some provided a blue collar workforce for industry. That was the area where historically the unions had been most fearful of women taking men's jobs. Growth of a low-wage labour force in that sector of the economy might threaten male employment or male wage standards (page 168).

The complex history of male resistance to equal pay and equal participation of women has dimensions not explicitly confronted in any paper in the book, but chapters on the ideology of domesticity in the colonial period, "Purified at Parramatta", and the morality of factory work do indicate the official endorsement of women's domestic dependence which gave force to the male unionist campaigns.

One chapter, by focussing on the first women's movement approach to law reform, demonstrates how the ideology of women's separateness was also entrenched in feminist analysis of female oppression, and shaped the campaigns for the vote, for protective legislation for working women, for action to save women from prostitution and venereal disease, for family allowances. Judith Allen, in a chapter entitled "Breaking into the Public Sphere. The struggle for women's citizenship in NSW 1890-1920" concludes (page 116):

> Because none of the feminist groupings in NSW recognised socially defined sex roles as oppressive of women, they had no criticism of the way in which these roles were embodied in law. Hence, they did not understand that the law could express, enforce and maintain female oppression.

Women were granted citizenship on sexist grounds, in that they succeeded in their argument that they were best fitted to represent other women and achieve legislation which would ameliorate the plight of less fortunate (that is, "working") women. Allen argues that analysis of legal reforms, the grounds for the changes and the ideology of the reformers casts grave doubt on the thesis that women's position has improved as conventionally evidenced by legal reforms affecting women.

Similar conclusions are drawn by Heather Radi in her chapter on custody of children. She argues that the custody legislation taken together with the early industrial schools legislation and the Children's Protection Act created conditions in which "the law had provided a means for a few women to get custody and guardianship of their children but possibly more had lost custody to the state" (page 125). A double-faceted policy brought this about. A father's common law rights to custody could be set aside by the courts where he had defaulted in his obligation to provide, thus displacing the right of the patriarch in favour of the

mother. But a mother's right depended on her ability to demonstrate a proper nurturing morality—which meant a strict and repressive sexual morality. The child's interest was emerging more clearly as the paramount consideration in the process of displacing parental rights. Recognition of formal equality between the parents with respect to the child paved the way for state intervention in common law and equitable rights of parenthood. Of course, these abstract rights were displaced by economic exigency. The logic of the argument placed the child's physical well-being first. But the "worth" of a mother was also measured on a moral scale.

One perhaps surprising omission in the collection is an analysis of the ideology and impact of modern welfare state interventions into women's lives. Little in the book deals directly with the status of prostitutes, or the status of single mothers and deserted wives under social security legislation.

Anne O'Brien does deal with state administration of the legal machinery for the maintenance of deserted wives at the turn of the century. From analysis of court records of charges and summonses in maintenance matters she concludes that the legal system was, and was seen as, largely ineffective in forcing men to contribute to the maintenance of women and children. Yet women who approached the State Children's Relief Fund were refused assistance if they had failed to summons the defaulting husband. Self-sufficiency was the operative moral principle; the inability of women to use the legal process to obtain maintenance was regarded as a personal inadequacy, not a failure of public policy (page 96).

It is difficult to trace through the book the contradictions in state provision of services and coercive intervention into women's lives. A reader takes personal concerns to the book, but the going will be tough, though challenging. There are no easy answers offered by the editors. To take one example of perceived contradictions in official policy towards women: the current version of self-sufficiency is the newly-emerging "family policy" which is displacing "women's affairs" as the rubric under which women's needs are translated into public policy. Women are being reinserted into families to become visible to policy, in sharp contrast to developments which are extending women's autonomous rights of citizenship. Chris Ronalds' summary of anti-discrimination legislation[3] points out that rights under these Acts may be exercised only in the public sphere of employment, access to goods and services and accommodation. How may these divergent developments be explained by reference to a theory of law as a tool of social policy?

In my view it is sufficient for the separate issues to have been raised. It is too early for satisfying synthesising theories. How, for example, is theory to deal with the evidence that public policy is eager to impute "married" status to women who would otherwise have a claim for state support (the notorious cohabitation clauses of social security legislation), while resisting the claim of a *de facto* wife to share the male's property and contingent interests such as superannuation benefits? Does the answer lie in seeing law as enforcing moral precepts, promoting the

[3] Ronalds, *Anti-Discrimination Legislation in Australia* (1979).

integrity of the family, protecting private property, or repressing women's autonomous sexuality? *In Pursuit of Justice* does not provide sustained analysis of theory to lend support to any of these hypotheses taken separately, though all are implied in different contributions. What we are given is a huge range of partly processed raw material.

For lawyers and social researchers accustomed to regarding law reports and legislative debates as the very stuff of history, the great merit of this book is to show how historians deal with the evidence available. Lawyers can learn from it to mistrust the glib generalisation, and to think of law in social terms. If as I have suggested there are varying, often conceptually quite opposed, analyses of how law functions, this should quicken the pulse of interest. Feminist historiography (and now jurisprudence?) is demonstrating its range and grasp.

HELEN MILLS*

*Legal Research: Materials and Methods* by ENID CAMPBELL, The Sir Isaac Isaacs Professor of Law, Monash University, E. J. GLASSON, Law Librarian, Monash University and ANN LAHORE, Senior Lecturer in Law, Monash University. (The Law Book Company, 1979, 2nd Edition), pp. i-x, 1-276. Cloth, recommended retail price $18.50 (ISBN: 0 455 19853 5); Paperback, recommended retail price $12.50 (ISBN: 0 455 19918 3).

At last a new edition! This book was first published in 1967 by Professor Enid Campbell and Professor Donald MacDougall and has since become a standard reference for all those concerned with Australian law. In the twelve years since the publication of the first edition, there have been many changes in the Australian legal system, and the production of a new edition after such a long period must have been a major task. It is to be hoped that the third edition will be published within a more realistic time, say, three to five years. Twelve years between editions is too long.

Included among the three authors is a law librarian, Ted Glasson of Monash University. There is ample evidence in the new edition of his experience in dealing with law materials, and the book is much improved as a result. One of his co-authors is also new, as Ann Lahore has replaced Donald MacDougall.

*The structure of the book*

The second edition is longer than the first (36 pages longer) and is in substantially the same form, although two chapters have been omitted. The material from one, on how to use statute books, has been incorporated in the new Chapters 8 and 9. The material from the other, on legal writing, has completely disappeared. This is a shame as it was a good chapter which concisely stated the basic principles of good legal writing.

After a general introduction to law libraries and primary and secondary

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sources (Chapter 1), the book deals with case law in England, Australia, other common law jurisdictions, and with the use of case law digests (Chapters 2-6); with statute law in the United Kingdom and Australia (including the Territories), and delegated legislation (Chapters 7-11); with secondary sources, covering encyclopaedias, treatises, dictionaries, periodicals and loose-leaf services (Chapters 12-15); with government and parliamentary publications and public archives (Chapters 16, 17 and Appendix A); with non-legal materials (Chapter 18); and with legal research and citation (Chapters 19 and 20). There is also in Appendix B a Glossary of Latin and Foreign Words and Phrases.

Almost every part of the book has been expanded, even the number of Latin and Foreign Words and Phrases in Appendix B. (Note, however, that the phrase *in pari materia*, used at page 128 is not included in the Glossary.)

*Case law (Chapter 2)*

Chapter 2, which is an introduction to case law in Australia has been expanded from 2 pages plus 2 tables, to 11 pages plus 3 tables. This expansion has been necessary in order to attempt an explanation of the confused situation in Australia of appeals to the Privy Council and to the High Court and to describe the system of Federal courts which has been created in Australia since the last edition. In relation to Privy Council and High Court appeals, the chapter comes to the conclusion (at page 12) that the problem is "apparently intractable". Although few would disagree with this statement, perhaps the nature of the problems involved could have been stated more concisely.

The chapter provides a guide to the weight to be given to the decisions of different courts, while warning that there are no "clear cut and absolute answers" (page 12). (Note that on page 14, the last sentence appears to be misplaced.) Also in the chapter are three very useful tables of court hierarchies: of England, Victoria, and Australian Federal courts. Each table has detailed notes which explain the hierarchy further. The table for Victoria explains the variations in other States.

*Law reports and digests (Chapters 3-6)*

Chapters 3, 4 and 5 are annotated bibliographies of law reports. The Australian chapter (Chapter 4) is particularly useful and includes reports omitted from the original edition, as well as 17 series which have started since then. A sensible addition to the chapter is a table of abbreviations of Australian law reports.

For those wishing to subscribe to reports, the inclusion of publishers would have been helpful. Two obvious errors: in Chapter 4 the *State Reports, New South Wales* have been left out and the *Papua and New Guinea Law Reports*, now of course excluded from the Australian chapter, have been left out of the book altogether.

Chapter 6 on digests has been carefully revised, with many examples now incorporated into the text.

*Statute law (Chapters 7-11)*

The general chapter (Chapter 7) is substantially the same. The summary on page 76 of how to determine whether a British statute

applies in Australia is a useful addition, as is the Additional Reading. Chapters 8 and 9 are full of good advice on finding and updating statutes. Chapter 10 on delegated legislation has been rewritten and greatly expanded. Although full of useful information, it is more discursive and delves more deeply into the law than the rest of the book. To some extent it is out of place in a book which is more concerned with finding than interpreting material. The section on the A.C.T. and Northern Territory is repeated, albeit slightly differently, in Chapter 11. Chapter 11 is more up to date as it mentions the reprinting of A.C.T. Ordinances.

*Secondary sources (Chapters 12-15)*

A notable addition is the detailed guide, on pages 163-166, to the use of *Halsbury's Laws of England.* Chapter 13 is expanded by the references to the considerable number of bibliographic aids and other secondary sources which have been produced since 1967. It is hard to know whether to be pleased or appalled by the ever-increasing number of sources which really *should* be searched before pen is put to paper.

Although out of date already, Chapters 14 and 15 on legal periodicals and loose-leaf services provide convenient lists of Australian publications. Three omissions can be mentioned. On page 183 the paragraph on the *Legal Resources Book* (Vic.) does not mention the *Legal Resources Book (NSW)* published in 1978 by the Redfern Legal Centre. There is also now an *ACT Supplement* to the N.S.W. edition, published in 1979 by the Law Faculty, The Australian National University.

Another surprising omission under the heading of Local Government on page 185 is the loose-leaf service which has been published for a number of years by Penryn Printing Service in Victoria. Penryn publishes the Local Government Act 1958, with an accompanying index in loose-leaf form. It also publishes a number of other Acts relating to local government in Victoria.

*Government and parliamentary publications, non-legal materials, public archives (Chapters 16, 17, 18, Appendix 1)*

Again a thorough and useful treatment of complex subjects.

*Legal research and citation (Chapters 19 and 20)*

The chapter on legal research is a general treatment of a subject which is difficult to describe and which can really only be learnt by practice.

Chapter 20 on citation although admirable, is deficient in one or two areas. The most notable deficiency is in the material dealing with citation of legislation. Nowhere is there an actual example of legislation being cited (*e.g.* "Dog Act 1958 (Vic.), s. 101(1)(a)(iii)") or of delegated legislation being cited. It is the experience of the authors that students find this omission very frustrating. The material on page 244 on citation repeats, although with variations, material on page 148 on citation of delegated legislation. This appears to be unnecessary duplication.

It is heartening to read (on page 245) the view that *full* citations of books and articles should *always* be given, not just "Smith, *Sociology of*

*Law* (1913)" or "*Jones on Contracts* (4th ed.)" but "John E. Smith *Sociology of Law*, New York, Judgmental Books, 1913". Much valuable time is wasted in searching for references when inadequate citations have been given. The authors have in all cases in the book given full citations. Unfortunately, however, they have not been consistent in the format they adopt. Although it is stated on pages 244-245 that "It is usual to write everything but the author's name, title, volume, and page number in parentheses", this is not done throughout the whole book. It is done, for example, on pages 155, 247, but is not done in the references at the end of the chapters, nor in most footnotes (*e.g.* pages 222-223). While both forms of citation are acceptable, either one form or the other should have been used.

Two other points. The *Style Manual* (3rd ed.) revised by John Pitson, Canberra, AGPS, 1978, should have been mentioned on page 237 as it is a useful reference. Another relates to the use of *ibid.* and *id.* The use of these terms as explained on page 246 does not appear to be that most commonly adopted.[1] Perhaps the other uses of *ibid.* and *id.* should be mentioned. Full marks to the authors, however, for their disapproval of Latin abbreviations (page 247). Perhaps one day, a simple citation system will be used by lawyers, and the mystique of *ibid., id., op. cit.* and *loc. cit.*, which has needlessly confused so many, will be dispelled forever.

*Conclusion*

This book has the distinction of being one of the few truly indispensable books for those involved in legal research. It is a security blanket for all those searching the daunting literature of law.

The book is already out of date. Some examples are: for Victorian legislation relating to Imperial legislation see now Imperial Acts Application Act 1980 No. 9426, Imperial Law Re-enactment Act 1980 No. 9407 (pages 75-76); the A.C.T. has no Law Reform Commission (page 93); Tasmania has produced a Hansard since 1979 (pages 198-206); the A.C.T. no longer has a Legislative Assembly, but a House of Assembly (page 203). These random examples make the point most strongly that the third edition should not be twelve years coming.

By the next edition a section on computer applications to legal data will be essential. There is a 5-line mention of computers on page 229 (which is not in the index under computers!) and another reference on page 215 to computer-based information retrieval systems. Admittedly, developments in the field of legal data have been few, but they do exist (for example, a considerable amount of work has been carried out both in the Law Faculty at the Australian National University and in the Commonwealth Attorney-General's Department). Readers should at least have been warned of the potential of computer technology to revolutionise legal research.

The book shows signs of being written by a syndicate. The style varies throughout the book and there is some duplication. This has

[1] See *e.g.* Pitson, *Style Manual* (3rd ed. 1978) 94.

affected the quality of the book. If, for example, the repetition had been eliminated, the chapter on legal writing could have remained.

One fundamental question in relation to the book remains unanswered: what is its purpose? Is it a reference book or a teaching book? If it is intended as a teaching book, it does not succeed, as the reviewers have found that students find it difficult to follow.[2] Nevertheless, the rather discursive style of the book appears to have a teaching purpose. If it is intended as a reference book, then a more concise style would be appropriate. In many cases, a checklist of searching aids would be sufficient. On pages 108-109, for example, instead of discussing the searching aids in sentence form, which tends to be rather confusing, a list of aids, accompanied by critical comments as to the advantages and disadvantages of each would be more helpful. Many other examples could be given. It is suggested that the twin matters of purpose and style be considered carefully by the authors before the next edition of the book is published.

GWEN MORRIS* and MARGARET MCALEESE**

*The Australian Federal System* by P. H. LANE, B.A., LL.M., LL.D. (Syd.), S.J.D. (Harvard), Barrister-at-Law; Professor in Constitutional Law, University of Sydney. (The Law Book Company, 1979, 2nd Edition), pp. i-xxxv, 1-1297. Cloth, recommended retail price $69.50 (ISBN: 0 455 19860 8).

The second edition of Professor Lane's comprehensive and stimulating text on the Australian federal Constitution (first edition, 1972) is likely to replace all earlier texts for professional purposes and for general reference. Its size, cost and arrangement may make it less suitable in the minds of many teachers as a class text, but a student who has any intention of specialising in public law will find Lane indispensable. It is the only work which can claim to have taken into account not only every decision but every important *dictum*, a product of the most prodigious and sustained scholarship.

The new edition covers cases reported to the end of 1978. It is two hundred pages longer than the first, not because of any substantial change in arrangement or format but because of the additional material accumulated in seven years, and notwithstanding the omission of the "United States Analogues" and the appended material on the U.S.

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[2] The book was used as a set text for first year at A.N.U. in 1980 in the unit Legal Writing and Research. In an evaluation completed at the end of the course, of 179 students, 13.7% found the book indispensable; 34% found it very useful; 29.5% found it sometimes useful; 14.7% found it of limited use and 2.1% found it of no use at all.

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