Book Reviews

Indigenous Australians and the Law (2nd edn)

Elliot Johnston, Martin Hinton and Daryle Rigney (eds)
London: Routledge, 2008, pp 288, $140

Indigenous Australians and the Law (2nd Edition), examines a wide range of contentious political issues regarding Indigenous Australians. As a second edition, it has been updated to cover the legal, social and political issues that have affected indigenous Australians in the ten years since the first edition was published. Many of the contributors to the book are Judges, Queen's Counsel and indigenous Australian writers. The stated aim of this book, contained in the preface, is to promote greater awareness of the issues that indigenous Australians continue to face in contemporary Australian society.

In contrast to the first edition, which focussed largely on land rights, the second edition focuses more on the social and political aspects of Aboriginal relationships with the law. The broader focus of the second edition has created a book suitable for a wide range of research purposes, while still serving as an introductory text for law students. The chapters are short, focussing on current issues, and engaging for the reader. The majority of the second edition is comprised of new material, with the exceptions of chapter 7 '*Aboriginal Customary Law and the Common Law*' which has been retained from the first edition; the chapter on '*Aboriginals and Sentencing*' has been updated for the second edition.

Chapter 1 is a synopsis of the policy changes that have affected indigenous Australians over the last ten years. There is a particular focus on the impact that these policy changes have had on the indigenous community in Ipswich, Queensland. Material covered includes the rise of Pauline Hanson and the One Nation Party, the recognition of native title in *Mabo v Queensland (No 2)*[1] and the abolition of Aboriginal and Torres Strait Islander Commission (ATSIC).

Chapters 2, 4, 5 and 8 offer a comprehensive coverage of social welfare issues affecting indigenous Australians. Chapter 2 considers the 1987-1991 Royal Commission into Aboriginal Deaths in Custody (RCIADC) and the unexpected findings regarding the rates of Aboriginal deaths in custody, which were no different to the rates of white deaths. Indigenous Australians are 15% more likely to be in prison, and the seemingly higher

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1 (1992) 175 CLR 1.

rate was due solely to over-representation in the prison population. Comparing the rates of Aboriginals in prison 15 years ago, when the report was done, with statistics covering to the present, this chapter reveals the disturbingly high representation of Aboriginals in custody, with 23.2% of all prisoners being Aboriginal in 2005.

The book – particularly chapter eight – deal with the causes for this over-representation of Aboriginals in custody, such as low levels of employment, lack of education, state-imposed separation from families, early and recurring contact with the police, alcoholism and poor health standards. Other issues explored include the health issue of petrol sniffing, the conditions of Aboriginals in state care, and the stolen generation. Although bringing to light the vast array of problems affecting indigenous Australians, little room is devoted to analysing or suggesting potential solutions. However, some chapters do deal with changes that address these issues. In chapter eight it is suggested that the RCADIC recommendations on the sentencing of Aboriginal offenders should be implemented to prevent re-offending in the indigenous population.

Chapters 7, 9, 10 and 11 focus on the developments in native title law with some attention given to customary law in Aboriginal societies. Chapter 9 primarily deals with native title recognition and water issues. This chapter explores the contrast between aboriginal custom, which views water and land as indivisible from each other, and Anglo-Australian attitudes toward water, as a tradeable commodity. Chapter 10 is an excellent introduction to the law proceeding from *Mabo v Queensland (No 2)*. This chapter also contains an examination of the events following the High Court's decision in *Wik Peoples v The State of Queensland*[1] and the subsequent government response of the 'Ten-Point Plan'. The more complex aspects of the *Native Title Act* (1993) are explained in this chapter in a clear and simple style, making the complexities of native title law accessible.

Chapters 12, 13, 14, 15 and 16 deal with the political issues facing indigenous peoples such as self-determination, recognition of indigenous rights, indigenous representation in government, human rights and reconciliation. These chapters aim to foster reconciliation and its practical implementation. Suggested means of reconciliation include treaty, and preventative reconciliation conflict resolution mechanisms. The book covers a vast array of issues and it has provided a useful introduction to aboriginal laws and customs, from the perspective of indigenous Australians. This is an excellent reference text.

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1 (1996) 187 CLR 1.

Indigenous Australians and the Law places contemporary issues in their historical context while recognizing that both reconciliation and the disadvantages faced by indigenous Australians remain ongoing concerns in Australian society. Although more attention could have been devoted to recommendations for change, *Indigenous Australians and the Law* encourages the reader to shift from complacency to consciousness of these important contemporary issues.

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The *Milošević* Trial: Lessons for the Conduct of Complex International Criminal Proceedings

Gideon Boas
Cambridge: Cambridge University Press, 2007, pp 324, $79.95

The Milošević Trial was written by Gideon Boas in response to the problems he observed during the four years he spent as senior legal adviser to the judges of the International Criminal Tribunal for the Former Yugoslavia (ICTY) during the *Milošević* trial. As the title suggests, Boas has sought to address the key issues facing international criminal trials in a comprehensive manner, particularly given that precedent provides very little guidance in addressing the issues that arise in international criminal law. The book consists of five chapters, with a forward by Geoffrey Robertson QC.

Boas begins by identifying fairness and expeditiousness as the critical determinants of the success of an international criminal trial, and these remain the underlying themes of most of his arguments throughout the book. Many of the issues he raises revolve around the interaction or conflict between these two requirements, or the need to balance them in order to achieve, what he terms, 'best practice'. Given that Boas concludes by arguing that the *Milošević* trial was substantially fair, the majority of his analysis tends to focus on identifying factors that hindered expeditiousness, or suggesting changes that would improve it. This focus on expeditiousness is justified on several counts: first, Dr Boas argues that a failure to ensure expeditiousness in the conduct of complex international criminal trials can 'have a negative effect on their fairness' (page 272). This is primarily because the 'longer a trial is allowed to run, the broader its scope, the more voluminous the evidence, the less

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