

words how race, gender, and class influence modes of policing. The chapters in this section look at the over-policing of certain communities and the under-policing of domestic violence and crimes against women. In his chapter 'The Government of Aborigines', Finnane identifies the policing of Aboriginal people as the single most important characteristic that distinguishes Australian police from their English and Irish counterparts. The chapter on this subject is amongst the best in the book. Finnane concludes on this topic that:

In the case of Aborigines, the interaction of legal regulation directed at the control of the poor, the homeless and the disruptive, with the socially marginalised status of indigenous people in Australia worked to the detriment of good policing. Where policing might have worked more consciously towards peace-keeping, in fact police interventions were often the stimulus to confrontation. Police were not neutral agents in these situations but agents of government presiding over dispossession and attempting to reconstruct or eliminate by assimilation the whole Aboriginal population.

The final section of the book, 'Governing the Police — Hidden Histories', looks at indiscipline and corruption amongst police. This section includes an examination of police recruitment and training, rules and discipline, corruption and reform. In the section on recruitment Finnane describes how traditionally policing has been the almost exclusive preserve of Anglo-Celtic men. He maintains, however, that recent affirmative action and the dropping of discriminatory barriers to recruitment, such as height tests, has led to a different composition of recruits. I believe Finnane is wrong in this. Policing is still a male occupation and destined to remain so for the foreseeable future. Around Australia women make up around about only 15 per cent of total police. Police forces have dropped height tests but have introduced other tests, for example, upper body strength tests, that have proved just as successful in keeping women out. Police forces may now include Australians from the established non-Anglo-Celtic ethnic and cultural groups (for example, Greeks and Italians) but endemic racism within the force remains a major barrier to the employment of indigenous and Asian Australians. On the topic of corruption, Finnane concludes that Australia's record of providing a system capable of producing reliable,

competent, and honest officers, and of dealing with crooked police is poor.

Finnane sheds much light on contemporary debates about policing and draws out many historical continuities. He argues, for example, that conventional critiques of the politicisation of policing are historically naive in that 'for much of the twentieth century, the police have sought to influence public policy in quite direct ways'. The reader learns that the scandals surrounding the methods by which police obtain confessions — force and fabrication — have been the subject of comment and inquiry for at least a hundred years and that the corrupt use of prison informers to obtain convictions, documented by the Independent Commission Against Corruption in New South Wales as recently as 1993, mirror exactly the practices described to a commission of inquiry more than a hundred years ago.

Finnane is to be congratulated for bringing a critical perspective to the history of policing. The histories he presents are far from the 'round-of-applause' style of history that assumes that police in general act for the public good. Finnane believes that there is much in the history of Australian police to confirm the importance of police to the interests of the powerful within and without government. Despite this the

histories he writes are largely, although certainly not entirely, 'official histories'. Finnane writes 'of telling silences which denote the use of unregulated violence, including murder, in the nineteenth century dispersal of Aborigines', yet his own failure to give voice to the continuing reality of unregulated police violence that is part of the lived experience of marginalised members of society is an omission of similar consequence.

Finnane has succeeded in the tasks he set himself in writing this book: he has written a specific history of the Australian police and demonstrated that many of the concerns regarding policing today in fact represent historical continuities. He has thus made an important and unique contribution to the literature on policing. Finnane has failed, however, to decry the policing *status quo* as a state of emergency that threatens those citizens most in need of protection. Milan Kundera writes: 'The struggle of people over tyranny is the struggle of memory over forgetting'. There are many abandoned or forgotten histories which await excavation in a history of policing that sets itself the more ambitious task of 'speaking truth to power'.

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## Making Labour Law in Australia: Industrial Relations, Politics and Law

by Laura Bennett; The Law Book Company Limited, Sydney, 1994, 253 pp; \$55.00; softcover.

On any view of the changes introduced by the *Industrial Relations Reform Act 1993* (Cth), 1994 was a very important year for industrial relations and labour law in Australia. This was the year in which the Australian Industrial Relations Commission was given new and improved powers to certify industrial agreements between unions and employers and in which parties to industrial negotiations were given a (somewhat hedged) licence to take industrial action, without interference from the Commission, as long as they were engaged in 'good faith' bargaining. The new-look Commission, now partly constituted by a bargaining division (especially created to promote bargaining and facilitate agreements), has been given the power to certify agreements between employers and employees directly, without the involvement of

a union.<sup>1</sup> The act has even been given new objects.

The Reform Act also created the Industrial Relations Court of Australia with broader jurisdiction than its predecessors, including the jurisdiction to issue writs against members of the Commission and the power to reinstate or compensate workers whose employment has been unlawfully terminated. In support of this legislative reform package, the Commonwealth Government called to aid not only the traditional heads of power, such as the conciliation and arbitration power, but also the corporations power and the external affairs power. The Government has more than simply tinkered with the machinery of industrial relations and labour law. Rather, it has undertaken an overhaul of the very process of settling

disputes and facilitating agreements in Australian industry. Central to this overhaul has been the shift in policy towards a 'bargaining' model of dispute settlement, involving a substantial shake-up of the institutions which create, enforce and utilise that policy.

In view of these developments, it would not be surprising if *Making Labour Law in Australia, Industrial Relations, Politics and Law*, published as it was shortly before most of the Reform Act took effect, had lost some of its edge. However, far from being overshadowed by the reforms, let alone dulled by them, this book provides an analysis of the interplay between politics, industrial relations and law in Australia which has much to offer in the context of the recent developments. Laura Bennett traces the history of the various industrial institutions concentrating on the role of the tribunals, particularly the judiciary, in shaping the doctrines of labour law.

In her conclusion, Laura Bennett states:

In labour law the pattern of doctrinal development reflects both institutional and cultural factors particularly the close relationship between the courts and the employers. The judiciary have been active in developing punitive legal regimes, alternatives to arbitration and in thwarting labourist developments. The comparison between different tribunal forms and the courts highlights the extent to which particular patterns of law making are contingent on the organisation of law making bodies and their links with other social groups. These links only become evident in the course of an historical and comparative analysis. The relative homogeneity of the courts in Australia has obscured the importance of institutional structure for an understanding of the making of law.

Bennett undertakes exactly this analysis examining, chapter by chapter, the 'links' between the various law-making and law-influencing bodies. Perhaps the most important focus in this study is the role of the judges themselves. Bennett looks closely at the development and use of judicial 'tools' such as bans clauses and secondary boycott provisions which, on her analysis, reveal a close alignment of the courts with the interests of capital and the employers. This is most clearly seen in the reluctance of the courts to abandon the view of arbitrations, adopted by early judges, as being 'disciplinary' and by disputes, such as at Mudginberri, which demonstrate the effectiveness of injunctions or common law damages as

part of employer strategies to sub-contract (and de-unionise) their labour force.

The alignment of the courts with the interests of capital seems at first blush to be one evidenced by case law and developments as late as 1994. The creation of an Industrial Relations Court with the jurisdiction to issue writs against the Commission would seem to make this form of redress all the more available, although there is no indication as yet that these remedies will be granted any more freely by the new court. Seven members of the High Court have, yet again, refused to allow the Commission to make awards providing for automatic deductions of union dues,<sup>2</sup> largely in reliance on the view that the Act limits the scope of the arbitration power. The decision of a Full Bench of the Federal Court in *McJanett v White* was widely regarded as a blow to the union movement's ongoing process of amalgamation and consolidation because it declared void a purported amalgamation between the Queensland branch of a large and powerful union and another union, depriving them of assets, coverage and membership.

Whether or not the courts, in the exercise of their more traditional industrial jurisdiction, continue to develop labour law in the manner described by Bennett will be a matter for history. The debate about the alignment of the judiciary is a continuing one and one in relation to which *Making Labour Law in Australia* will have made a substantial contribution. However, the more recent developments in the institutions themselves create pressures of their own. The new jurisdiction of the Indus-

trial Relations Court in relation to unlawful termination has been interpreted generously, indicating a desire on the part of that Court, at least, to give full rein to the minimum entitlements of employees in part VIA of the *Industrial Relations Act*. Similarly, the restructuring of the Commission to create a bargaining division and the move away from arbitrating award provisions will put new pressures on the Commission in terms of its own policy development. It is likely that the institutions which are the subject of Bennett's study will develop internally as the impact of the Reform Act is felt. It will probably be these developments, particularly as the Commission sorts out its role as both arbitrator and 'hands free' umpire, which will provide the most interesting pressures on the development of labour law over the next few years.

Laura Bennett's study has an enduring relevance as these developments unfold, providing an excellent vantage point from which to examine them. *Making Labour Law in Australia*, in analysing the roles of the institutions which create and enforce labour law, provides an understanding of those institutions and the pressures which they place on both the law and one another. Without such an understanding, it will be impossible to judge, or even gauge, the current round of developments.

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**References**

1. Note, however, that in at least one instance an employer, already bound by an award, has been ordered to bargain 'in good faith' with a union which had no members at the particular site: *AFMEU and Asahi Ltd*, Hodder C, 19.12.94 Print L.
2. *Re: Alcan and others: Ex parte FIMEE* (unreported, 25 August 1994). See also *R v Portus; Ex parte ANZ Banking Group Ltd* (1972) 127 CLR 353.

