

BOOK REVIEW

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A Second Chance for Justice: The Prosecutions of Gabe Watson for the Death of Tina Thomas by Asher Flynn and Kate Fitz-Gibbon, (Cambridge Scholars Publishing, 2013) ISBN (10):1-4438-4202-8, ISBN (13):978-1-4438-4202-0; 270 pages

AUDIENCE AND ACCESSIBILITY

This well written and engaging book is meticulously researched by two Australian criminology academics. Not only is the book based on a nuanced understanding of the relevant criminal law in Queensland and Alabama, it also includes detailed observations made by the authors of the capital murder trial in Alabama, media reports on the case, and substantial commentary from various people involved. These additional resources contextualize the formal analysis of the legal system's failures with a narrative that gives an added insight into the lived experiences of the participants, although the authors rightly acknowledge the deficiencies in the analysis created by the notable exceptions of commentary from Gabe Watson himself, Alabama Judge Tommy Naill, and anyone from the Queensland Office of the Director of Public Prosecutions (ODPP).

While the book is interesting for an academic audience, it is also accessible to a lay audience. The authors explain complex legal concepts (such as coronial inquests, plea bargaining, extradition and deportment, double jeopardy), clearly and simply, and maintain an engaging narrative style throughout.

The book is a nice companion to *Honeymoon Dive: The real story behind the tragic honeymoon death of Tina Watson* by Lindsay Simpson and Jennifer Cooke (Macmillan, 2010) which provides a more journalistic review of the case.

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STRUCTURE

Part 1 of the book explores the concept of justice as it applied to the handling of the case in Queensland, by the police and the ODPP. Beginning with an account of the Queensland Police investigation into the events of the day in question, the book then considers the difficulties and delays in the prolonged police investigation and the subsequent indictment of Gabe Watson for murder, following the Coronial Inquest. Of particular interest in this section is the frank commentary provided by Coroner Glasgow into the decisions and processes of the Queensland Coronial Court. Subsequent chapters explain the circumstances of the plea bargain and how it was presented to Tina's family. As the plea bargain process is claimed to be one of the fundamental failures in the attainment of both substantive and procedural justice in the Australian jurisdiction, the absence of explanation by the ODPP is unfortunate.

Part 2 of the book explores the concept of justice in the capital murder trial in Alabama. It explains how it was possible to re-try Gabe Watson despite the fact that he had already served time in Australia for manslaughter for the same events, thereby avoiding double jeopardy rules through reliance on the doctrine of dual sovereignty and Australia's ability to deport rather than extradite Watson. The part continues with discussion of the difficulties for the prosecution in proving their case (particularly the alleged motive of pecuniary gain), the perceptions created of Gabe's character and how the actual 'trial' played out to its abrupt conclusion with the successful motion of acquittal at the close of the prosecution case.

Part 3 of the book considers whether 'justice' was achieved for either Gabe Watson or Tina Thomas and critically analyses whether or not justice could have been attained by the Alabama proceedings.

There is also a helpful overview of each of the chapters provided in an Appendix at the end of the book.

MAIN THEMES

The book's main theme is about justice: in particular its subjective nature and the difference between substantive and procedural justice. The book contextualizes justice, recognizing that the decisions made not only by judges and juries, but also by police, politicians, prosecutors and defence lawyers all have an impact on whether or not justice can be served in any particular case. The

difficulties inherent in defining justice, how it may be attained and which party, in an adversarial system, may be said to have attained justice is apparent in the analysis of how the Watson case played out.

The authors recognize that there will always be a significant tension between the ideal of providing a forum in which justice can be theoretically achieved (e.g. a public transparent trial with all evidence) and considerations of cost and efficiency, right from the initial police investigations to the trial. They also demonstrate the particular cost and efficiency challenges in a case involving parties and witnesses from different countries; and how these challenges are magnified when there is delay in the various processes leading up to a trial. Such challenges and tensions (which led to a nine year ordeal for the parties concerned) had a considerable effect on the investigation and prosecution of Gabe Watson in both Queensland and Alabama.

According to the authors' analysis, justice in this case was also impacted by unfortunate timing. At the time Gabe's murder trial was due to be heard, the Queensland Supreme Courts were experiencing the highest pending caseload of all Australia superior courts (p.66). The Queensland ODPP was also under significant financial pressure, with serious lack of resources leading to a higher than usual rate of withdrawal of cases for trial (p.67). There were other high profile cases being managed by the short-staffed and under-resourced ODPP at the time, the Jayant Patel case, and the Gordon Nuttall case, (p.71). Similar funding issues were being experienced by the court in Alabama at the time of the capital murder trial resulting in the trial being delayed (p.131).

One of the main arguments made by the authors is that justice is not served when decisions are made by individuals with discretionary decision-making powers, and when those decisions are not transparent nor are those decision makers accountable (e.g. where there is no right of appeal). In this case, there were a number of instances during the various processes in which individuals made decisions that the authors argue had a negative impact on justice: the Queensland State Coroner Michael Barnes' original decision to close the coronial investigation, the Queensland ODPP's decision to enter into a plea bargain and to limit what was included in the agreed statement of facts, and Alabama Judge Tommy Naill's decision to acquit before the defence evidence was put to the jury. Given these conclusions by the authors, it is a pity that the voices of those players could not be heard. Whilst it must be acknowledged that on the whole the authors provide a balanced and well supported analysis of all the materials available, the strongest opinions expressed in the book come from the police investigators and the Thomas family, both of whom had so much

invested in the outcome.

A further criticism made by the authors is that justice could never be fully served, from either Gabe Watson's or Tina's perspective, until all the evidence could be presented in a court of law, and arguably also evaluated by a jury (rather than a single judge). Had this happened, although one side was inevitably going to be unhappy with the outcome, at least the process of justice would have been seen to have been done. In both Queensland and Alabama, the main obstacle to such a trial being possible appears to have been financial – the cost of running such a trial, including the availability of witnesses. This, they argue, unduly influenced many of the decisions by participants to delay the investigation and prosecution and avoid a trial of Gabe Watson on the murder charge. The authors pose the question whether, if all the evidence had been easily available in either location, would the outcome of this case have been different?

It seems that the criminal trial in Alabama, instead of providing a second chance for justice, resulted in second-class justice for both Tina Thomas and Gabe Watson.