

BOOK REVIEWS

Law and Crime: Essays in Honor of Sir John Barry, edited by NORVAL MORRIS and MARK PERLMAN (Gordon and Breach, New York, London and Paris, 1972), pp. i-vii, 1-259, 1 plate. Australian price \$15.60 (Hard Cover). ISBN 0 677 15270 1.

The editors of this journal who approached me to review the above book were obviously misled by its title. Crime in the sense of trying to successfully defend citizens charged with offences as distinct from problems associated with the 'punishment' of unsuccessful customers, has a relatively insignificant treatment in this series of essays. In fact, appearances for persons in Criminal Trials played little part in Jack Barry's career.

As a professional doing 'only Criminal Cases', I have not any special qualifications to review this work. This however does not unduly deter me.

Knowing the recipient of this tribute over many years I am sure its publication would have greatly pleased him. But other than as a memento of Sir John Barry, I do not think it will greatly interest the practising lawyer. Some students under the spell of the theoretical wizards, the professors, may find the contributions of mighty fascination. However, I found a large element of futility in the bewildering polemics of several authors.

The work is divided into four Parts.

Part II

Criminology and penal institutions are dealt with in Part II although an article on the concept of Recklessness in the Criminal Law finds its way into Part I. This article appears to promote much more confusion than it resolves.

Articles in Part II contain a discussion of the English Criminal Justice Act and Criminal Law Act 1967, which is the forerunner of several recent reforms (whether improvements or not remains to be seen) in our own legislation.

The introduction in England of majority decisions in Criminal Trials is discussed. In my view this is a further erosion of the basis of our Criminal Law, the presumption of innocence for, in the first 15 months of operation, only 7% of the total of guilty verdicts were not unanimous. The article covers many subjects from parole to the Theft Act of 1968.

The authoress, The Baroness Wootton of Abinger, claims some 40 years experience as 'one of those curious anomalies the British Justice of the Peace' (p. 103).

One of the joint editors Norval Morris contributes an article 'Corrections and the Community'. It appears to me to reflect the very low priority reserved in our society, for prison reform. The author's theme, more citizen participation, seems to take some time to develop and rapidly capsizes.

Two historical articles complete 'Crime'.

Firstly, 'Reformatory Aspects of the Transportation of Criminals to Australia' which takes the opportunity to bring in Maconochie the subject matter of Sir John Barry's book 'Alexander Maconochie of Norfolk Island' and secondly one on Thomas Mott Osborne an earnest, but apparently ineffectual, prison reformer of the 19th and early 20th centuries. This latter article makes it fairly clear why Mr Osborne's obscurity has been so successfully maintained.

The idea that men in these barbarous institutions can learn to be good citizens or cope with the outside jungle, by practising democracy in prison, was surely ludicrous even in this period.

Part I

A workmanlike article by Geoffrey Sawyer on 'The Judgments of Sir John Barry'; a useful and informative analysis by Sir Richard Eggleston on 'The Assessment of Credibility', which should drastically curtail cross-examination before him, and a contribution by Peter Brett—'Law in a Scientific Age' appear in Part I under the head 'Law and the Legal System'.

Part III

Part III Economic and Socio-Economic Relations is monopolized by the other Co-Editor Mark Perlman. I found the article pointless and very, very dull.

Part IV

A welcome change is contained in Part IV under the title 'Sir John Barry: The Man'. Two biographies, one by Sir Eugene Gorman, the other written by Professor Cowan provide a contrast in style. The concise effectiveness of the former is in contrast to the much harder working Zelman.

To my mind these two articles are the only real justification for the publication and are most readable and full of interest.

What does the book achieve? It is described by Pat Gorman as a *festschrift*. It seems to me to be all that, although I have not yet discovered the meaning of the term.

Some overlapping and repetition (the 'Whose Baby Case'¹ is dealt with at least 3 times) are examples of the problem of this type of publication.

I do not think it a useful substitute for a biography which would surely have been a more fitting and effective testimonial to such a colourful and interesting subject.

JACK M. LAZARUS*

Conflicts of Laws in Australia, by P. E. NYGH, LL.M. (Syd.), S.J.D. (Mich.) 2nd Edition (Butterworths, Australia 1971), pp. 5-808. Australian recommended price \$19.50 (hard). SBN 409 43750 6.

This is the second edition of Professor Nygh's comprehensive work on Australian Conflict of Laws. As against the first edition (1968) it has a considerably increased page coverage but proceeds on the same basic plan except for the re-writing of certain chapters on property in the first edition which were contributed by the present reviewer.

The work shows very thorough and painstaking research. It has a very extensive coverage of case material and probably mentions, somewhere or other, every recent case which bears on the subject of Conflict of Laws in Australia, the United Kingdom and Canada—perhaps even some which are scarcely worth recording. It discusses a vast array of possible questions and at least in the fields of contract and property and of jurisdiction and procedure almost every conceivable point is discussed. The discussion of disputed or doubtful points is conducted in an interesting manner and if one cannot agree with all the conclusions they are at least presented with vigour.

Nonetheless it remains a fact that notwithstanding the wide coverage of case material and possible points of doctrine, this just fails to be the sort of book to

¹ *Morrison v. Jenkins* (1949) 80 C.L.R. 626.

* Barrister-at-Law.