

Book Reviews

The Criminal Codes: Commentary and Materials

Karen L Whitney, Martin M Flynn and Paul D Moyle

Fifth Edition, LBC Information Services, 2000, pp 640, \$114.35(Inc GST)

The Criminal Codes: Commentary and Materials is a comprehensive text on the Western Australian and Queensland Criminal Codes that promotes contextual analysis of criminal law. The authors, Karen L Whitney, Martin M Flynn and Paul D Moyle, each of whom lecture in law at the University of Western Australia, adopted this analytical approach due to the notable absence of contextual inquiry in student texts on code-based law. This framework does not neglect substantive law, however, with the authors achieving an appropriate balance between this traditional content and contextual materials. *The Criminal Codes* appears to be primarily directed at students of criminal law in Queensland and Western Australia. This audience is well served by the text, given its clarity, accessibility, and incorporation of legal problems and discussion questions. The latter further enhance the overall quality and usefulness of the text in encouraging legal analysis skills and critical reflection on the law.

The opening chapter of *The Criminal Codes* provides an introduction to code-based law, canvassing matters such as the history of codification, sources of criminal law, and the disparity between Code and common law approaches to defining criminal offences. The authors also give succinct descriptions of the position of particular parties, such as children and corporations, and beneficially, criminal procedure.

The social construction of criminal behaviour is examined in the subsequent chapter. In addressing the issue of why certain activity gains criminal status, and the factors that should influence this classification, the authors present material of a sociological nature and writings on liberal theory, a mode of thought which rationalises state intervention in this context on the basis of the 'harm principle'. This liberal understanding and its effect on constructions of criminality is further explored in passages on the contested meaning of 'harm', alternatives to this guiding rationale, and the complicated notion of 'morality'. Discussions of the related concept of liberal individualism and importantly, conflict between Indigenous cultural values and liberal interests, are also accommodated. A brief summary of the power of 'law and order' rhetoric concludes this insightful and thoughtful

provoking chapter. In light of the important theoretical knowledge that this section of the text imparts, it is advised that readers, for the purpose of critical reflection, follow the authors' recommendation to complete this chapter, and the introductory chapter, before beginning those elements of the text pertaining to substantive law.

Fatal offences against the person are surveyed in chapter three. In addition to delineating the elements of the principal homicidal offences, the authors also contribute useful foundational data on the 'nature and prevalence of homicide in Australia', and a sample of law and discourse on the significant policy issue of euthanasia.

The following chapter on non-fatal, non-sexual offences against the person details assault, offences endangering life or health, and stalking and threat offences. Stalking offences are critically analysed in materials on the adequacy of these offences, and the definitional dilemmas that compound this aspect of the law. This analysis continues in the chapter's exploration of the fascinating yet highly complex area of consent, which incorporates thoughtful articles on consent to 'sexually deviant' acts, and consent to punishment in conformity with Indigenous law.

Importantly, this contextual emphasis is maintained in the authors' explication of sexual offences. Sexual offences against 'competent' persons are firstly examined. In detailing offences involving penetration, this section includes a notable analysis on the extent to which the method of penetration determines the length of a sentence for such an offence. Sexual offences against 'incompetent' persons and offences against morality are then explained, with the latter essentially consisting of helpful commentary on gay law reform. Critical feminist writings on the construction of responsibility for sexual offences follow, the first of which highlights issues such as the historical content of this responsibility and androcentric conceptions of 'sexual acts'. The second piece proposes, in part, an alternative construction of rape as a consequence crime, as opposed to one of circumstance. The gender bias of the courts in dealing with sexual assaults is also observed, with the authors providing intriguing articles on the questionable use of the 'welfare approach' to sentencing, the presence of the 'virgin/whore continuum' in sentencing practice, Justice Bollen's infamous comments in relation to marital rape, and the possibility of a 'continuum of sexual violence'.

Chapter six concerns property offences. Theoretical bases for this aspect of criminal law are charted, such as the prominence of property rights within the liberal framework of personal rights, and the disparate treatment of 'white collar' crime in comparison with petty theft.

This provides an advantageous foundation for studying subsequent law on the offences of stealing, robbery, housebreaking/burglary, fraud, and damage to property.

Defences are the subject of succeeding explanation and analysis, beginning with provocation. Here the authors present historical perspectives on the defence, including the law of sexual provocation, and devote most attention to homicide and provocation, with simply a brief description of provocation and non-fatal offences. This chief component on homicide and provocation includes further discussion of sexual provocation, and crucially, the 'homosexual advance defence' in regard to the meaning of the 'provocative incident'. With respect to the requirement of proportionate retaliation, passages on the use and relevance of evidence concerning race and ethnicity and the 'battered woman syndrome' are pertinent. The experiences of battered women are also investigated from a feminist perspective in the context of 'timely retaliation'.

This feminist inquiry continues in the following chapter on self-defence, where the gendered nature of this defence receives considerable attention. For instance, complications as to the use of evidence of abuse, the difficulties flowing from wider societal perceptions of domestic violence, and objections to the concept of the 'battered woman syndrome' are appropriately addressed in this regard. The chapter also thoroughly attends to the substantive law on self-defence against provoked and unprovoked assaults.

The subsequent chapters of *The Criminal Codes*, whilst providing clear explanations of 'black letter' law, offer little contextual analysis. To begin, the chapter on voluntariness, accident, intention and motive principally details the 'first limb' and the 'second limb' of s23. The chapter on mental impairment focuses upon insanity, diminished responsibility and intoxication, and the authors' treatment of mistake in chapter eleven canvasses mistake of law and mistake of fact.

Similarly, the next section of the text on the law of attempts is largely concerned with substantive law. It does, however, provide a concise analysis of rationales for attempt liability, which highlights the three attempts pose to bodily or proprietary security, and utilitarian justifications relating to the restraint and rehabilitation of the offender. Likewise, the penultimate chapter on conspiracies and parties notes rationales for the offence of conspiracy before outlining the content of criminal responsibility in these fields.

The Criminal Codes concludes with a description of sentencing and penal law, a particularly helpful chapter which gives a 'rounded' perspective to introductory studies of criminal law and the criminal law

system. It begins by surveying sentencing theory, observing that a broad range of philosophies and concepts influence sentencing, and identifying the dominant aims of deterrence, rehabilitation, retribution, incapacitation and so on. The law of sentencing practice and procedure is also detailed, and importantly, a discussion of mandatory sentencing is additionally afforded. The chapter ends with an examination of penal law, which incorporates various reviews of corrective services.

The Criminal Codes is ultimately a highly successful text. It is clearly written, aptly structured and thematically arranged, and its visual design enhances its accessibility. The importance of contextual analyses of criminal law is well illustrated, and the authors' emphasis on such critique is most welcome in the areas of consent, sexual offences, provocation, self-defence, and constructions of criminal behaviour. Although *The Criminal Codes* appears to be essentially designed for students in Western Australia and Queensland, it is suggested that its applicability is not limited to this audience. In particular, both students in remaining code jurisdictions and academics may find it beneficial. More generally, the text is also recommended to students outside Western Australia and Queensland who wish to gain an understanding of criminal law, and the vital contextual issues it encompasses, beyond the jurisdiction in which they are studying.

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Legal Research Manual

Andrew D Mitchell and Tania Voon

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For both students and practitioners finding out whether a case has been overruled, or if a legislative provision has been amended or repealed can make a huge difference in the assignment you write or the advice given to a client. However, for many people legal research is a time consuming and confusing process, which more often ends in frustration than success. In their text *Legal Research Manual*, Mitchell and Voon attempt to demystify the intricacies of the legal research process and provide the reader with a simple and straightforward introduction to research techniques and products.

This book is not designed to turn the reader into a research expert but rather aims to show them good basic research skills. The authors

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