

BOOK REVIEW

Author: Woods, G.D.

Title: A History of the Criminal Law in New South Wales - The Colonial Period 1788 - 1900

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G.D. Woods is described as a "Sydney historian and author who sits as a judge in the New South Wales District Court usually in the criminal jurisdiction". But that information discloses only part of the author's background and vocation. It could be argued that Wood's professional (and academic) background as a member of the Faculty of Law at Sydney University contributed to the writing of this book. . While teaching criminal law and criminology during the 1970s, Woods discovered that it was not sufficient to merely teach students the current law and legal issues. Students also need a more nuanced appreciation of the history of both the principles and procedures in the criminal law of New South Wales. I believe Woods' book achieve this aim. Wood's book deals with the history of criminal law during the colonial period of New South Wales from 1788 to 1900, and it portrays that colourful and turbulent period. And it does so not merely as a basic history textbook. Chapters in the book discuss actual court cases, parliamentary records, newspaper clippings, official gazette records, military records and other archived material. And this detailed discussion provides the reader with actual, historical and sociological perspectives concerning many of the events that form the history of Australia as a penal colony.

There are twenty-nine chapters in Wood's book. He tries to maintain the chronology of events of the "colonial period". Each chapter provides a strong, realistic and insightful view of the events and actions which occurred in 19th century colonial Australia. Some the Chapters deals with the establishment of the colony of New South Wales, the "transplanting" of English law to the colony, the promulgation of the 1900 Crimes Act and the creation of the new Commonwealth of Australia. Each chapter reveals to us readers the policies of colonial administrators, the struggle of legislators to maintain the newly introduced legal system, the racial conflicts between white settlers and Aborigines, and the ever-growing demands on the penal system in dealing with crime.

Notwithstanding the pervasive historical theme of his book, the author has managed to include in virtually every chapter, a legal analysis of the respective subject matter or topic. Whether Woods is discussing the scene of a criminal trial, a ruling or describing the constant conflict between the Executive and the Judiciary, his "background commentary" is such that contemporary readers -including practitioners- will enjoy it. Wood's superb account of these events perhaps provides an example as to how legal history should be written and taught these days.

The book is indeed a major publication dealing with the history of criminal law in New South Wales. As a reader from the South Pacific and for the purpose of this review I will focus my comments mainly on two Chapters. " Struggling from Chains: Juries, The Lash and Natives" (Chapter 6) and "A Most Irregular Traffic: Slaving Cases in New South Wales Courts" (Chapter 15) are two compelling chapters of this

book. Both chapters deal with of "settler-native" contact and relations. This aspect of colonial history should never be forgotten nor could the treatment of the "natives" during the colonial period be ever justified. One could add here that this - at least at times- troubling issue has never really been resolved to this day.

Woods' has conducted an impressive amount of research for these two Chapters. He uses actual case reports, maritime and shipping records and first-hand accounts of witnesses. The Myall Creek Case whereby the inhabitants of an entire Aboriginal village were massacred by a couple of white settlers is featured in Chapter 6. The trafficking of slaves from the South Seas called "blackbirding" is discussed in Chapter 15. The author also highlights the measures taken against blackbirding and the trials that were held to punish blackbirders. In these chapters, one can discern Woods' personal view about the wickedness and injustices of the colonial administration and especially in relation to the way New South Wales courts had handled the issue of racial conflict and slavery.

Readers with an interest in legal history will find this book invaluable and a "treasure". For legal academics, it provides a plethora of research materials about many areas of the criminal law as it was practiced then and also about criminal law reform of that era. For legal practitioners, this book gives a good insight into the fashions and traditions of legal practice in an era in which English common law principles were applied outside of England amongst a new colonial community of settlers, traders, convicts and former-convicts. I must also recommend this book to policy-makers and legal drafters since there are lots of information concerning parliamentary debates, executive wranglings and politicking over "hot" issues of their time such as those dealing with the prerogative of mercy, jury selection, rights of accused and legislative reform.

I find it refreshing that the author does not hide or distort the obvious fact that Australia's criminal law history arose from that of a "convict colony". Convicted criminals and their keepers were sent from England to serve their sentences in Australia since the English legal system was not equipped to execute offenders who were sentenced to death by their courts. Moreover the practices of the settlers and their penal laws also negatively- to say the least- affected the Aboriginal population. The author makes this assertion quite openly - albeit it in one of his footnotes- when he writes about the massacre of Aboriginal natives, thus:

I have not referred to the extensive debate about how many aborigines were killed by white settlers, but in general my view is that number has long been minimised. ...those who deride a 'black armband' view of history will be dismissed as defiant of the evidence. ...Logic and evidence will not end the debate, because many white Australians remain psychologically and culturally incapable of coping with the reality of the misconduct of revered forebears. (page.86, note 79)

There are other publications which deal with Australia's colonial history and development, either on a specific topic or more generically. The value of this book is that it provides a wonderful summary of legal developments in the state of New South Wales during the colonial era. The development of criminal laws of New South Wales and its penal system is also effectively narrated in this book.

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