

question of remoteness or the confusion of issues by the introduction of matters of only remote relevance, together with the operation of the hearsay and opinion rules" (p230).

The second illustration is Stone's explanation of the rationale of the need for opinion evidence to be anchored in appropriate assumptions and not, save in the exceptional case of the observer-expert, to stray into the facts. As Stone puts it, the rule "is not intended to exclude expert opinion based on the facts, but his opinion as to what the facts are" (p442). This question was recently considered by the Full Federal Court in *Arnotts Ltd v Trade Practices Commission* (1990) 97 ALR 555 at 588-9.

The book is well presented. Although Stone used footnotes extensively, Wells decided, wisely, I think, to incorporate the footnotes into the text with a view to making the work more easily readable.

B A BEAUMONT\*

## LAW, LIBERTY AND AUSTRALIAN DEMOCRACY

by Beth Gaze and Melinda Jones,  
Sydney, Law Book Company, 1990, 505pp

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This is one of a number of books published in 1990 by women lawyers that have made significant contributions to the literature of the law. Others that might be mentioned in the context of concerns within the field of human rights generally are *The Hidden Gender of Law* by Graycar and Morgan, *Women and the Law* by Scutt, *Same Difference: Feminism and Sexual Difference* by Bacchi and *The Liberal Promise: Anti-Discrimination Legislation in Australia* by Thornton (actually published in 1991).

*Law, Liberty and Australian Democracy* is about the role of law in protecting a wide range of civil and political rights, and contains as well a brief excursion into the field of economic and social rights. Unlike most legal texts on civil liberties, it starts with an extended discussion of political issues and reviews the contributions of Mill, Dworkin and modern democratic theorists such as Mayo and MacCormick (the latter not, incidentally, listed in the useful 13 page bibliography that appears at the front of the book). The discussion may not be long enough for the expert political science student, but would provide a useful introduction to the main concepts for the "pure" law student.

After the opening discussion (contained in part I — 68 pages), the book is divided into three further parts. The first and longest (170 pages) deals with political and democratic rights such as voting rights, the right to public protest and freedom of assembly, the right to criticise the state and the limits on liberty imposed by the state. The second (150 pages) deals with individual rights such as freedom of religion and belief, media and freedom of speech, privacy and the policing of social standards. The third (99 pages) addresses the concept of equality, and in particular the questions of rights in a multicultural society and of economic rights.

It is disappointing that the innovative first part is not more closely linked to the later parts. The later parts contain assessments of the (often unsatisfactory) state of the law, and refer to criteria drawn from Mill, Dworkin, the utilitarians and "liberal democracy", to name the most frequently used. But the criteria used for the assessments are not readily relatable to the discussion in the first part of the bases of democracy and democratic theory. It would have been useful to have for reference in the first part brief descriptions of the elements making up the criteria used later for assessment of the state of the law.

Rather more than half the book is made up of about 140 extracts from books/articles/reports and from cases/statutes (there are slightly more case/statute extracts than book etc extracts). The remainder is interspersed text contributed by the authors (who have

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mentioned in the preface the chapters for which each was primarily responsible). In some places, particularly the opening survey, there is little interspersed quotation. In others, for example the chapters on media, information and freedom of speech (chapter 8), on policing social standards (chapter 10) and on rights in a multicultural society (chapter 12), the major part of the text consists of extracts from cases, books and articles.

The advantage of the interspersed text/extracts method of presenting issues is that a wealth of different viewpoints can be presented, and this certainly is achieved. The disadvantage is that it is not always easy to keep a main thread going. This reviewer finds the covering essay with appended materials, as in say Barker and Barker, *Civil Liberties and the Constitution*, more readily assimilable. But the authors have on the whole managed to maintain the continuity and to include an interesting selection of topical and basic material.

Perhaps the best statement of the overall thrust of the book is to be found when the authors state that "we have chosen for detailed consideration those areas of individual rights which have received little systematic treatment elsewhere, and which we consider to be of primary importance" (p33). Thus process rights, particularly those relating to the police (entry, arrest and so on) and to criminal charges and trials, and freedom of movement, are not covered. On the other hand, there is interesting background to some very topical issues such as the *Ananda Marga* case and the associated Hilton Hotel bombing (p231); the restricting of the powers of ASIO through the establishment of the Inspector-General (p218ff); the publication of *Satanic Verses* (p260); the charges laid by Cojuanga in the *Peter Hastings (John Fairfax)* case (p319); and the charges laid by the Victorian Government in the *Hinch* case (p310). The setting and discussion of the treatment of homosexual persons by the law, and particularly the discussion of the custody of children, are very good (p358ff).

A useful contribution made by the book is to draw attention to the many relevant findings of the ill-fated Constitutional Commission that reported in 1988. The Commission proposed significant changes to the Commonwealth Constitution, particularly in the field of civil and political rights. It is important to maintain focus on the Commission, and to bring the issues before as wide a public as possible. The account of the protection of voting and other democratic rights in chapter 3 is comprehensive.

The inclusion of chapter 12 which deals with rights in a multicultural society is useful in that it recognises a difficult problem confronting our legal system which has so far barely got beyond stating that interpreters are sometimes necessary if there is to be a fair trial. However, much of the chapter relates to the situation of Aborigines, who really deserve a collected chapter of their own. Aborigines see themselves as a distinct community or people within (and not always within) the Australian community. Assembling in the one chapter or section the separated sections that cover them might have better portrayed their specially disadvantaged situation. It is disappointing that the rest of the text does not go beyond reviewing the extent to which a multicultural emphasis has impacted on family law and criminal law and the attitudes of at least some judges, though what it does do in these areas is of much interest.

There are blemishes in some statements of aspects of the existing law. To mention a few: it is difficult to deal adequately with the topic of freedom of expression as it relates to a fair trial in the common law world without at least a reference to the *Sunday Times* case (p303ff); it also seems regrettable that the middle line taken by Wilson and Deane JJ in the *Church of the New Faith* (Scientology) case is not given some recognition (p251); the statement (p290) about the law relating to defamation in the eight Australian jurisdictions is not really capable of simplification into three categories as suggested (the law is, as the comment states, variable but is in fact a varying blend of common law and statute in each jurisdiction that is not readily divided into three categories); in mentioning federal courts other than the High Court, reference should have been made to the Family and Territory Courts as well as to the Federal Court (p45); nor can the individual (yet) take a complaint to the European Court of Human Rights — his or her resort is to the Commission which alone, with member countries, can approach the Court itself (p63). However, these are small blemishes in a work that ranges as widely as does this one.

In summary, *Law, Liberty and Democracy* opens up a wide range of interesting issues for discussion, and provides a lot of not always very accessible information to assist in the process. It will be a useful book, primarily for law students studying in a contextual way a selected range of topics within the broad field of civil and political rights. It will serve as a quick first reference for practitioners. It could also be a useful source of reference for those studying political science who want to know compendiously about the main legal provisions and approaches in relation to the subjects it covers.

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## INTELLECTUAL PROPERTY LAW IN AUSTRALIA

by Jill McKeough and Andrew Stewart,  
Sydney, Butterworths, 1991, xlvi + 435pp

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Intellectual property law has never been widely understood in Australia despite the existence of a number of excellent works on the subject. This new book should go some way to changing that.

The book falls into six parts and contains a number of innovations as regards setting out. The first innovation is that after a brief discussion of policy issues and the rationales for providing protection for intellectual property rights in part I, the authors then describe the way in which intellectual property rights can be enforced. Enforcement and remedies are topics which are generally dealt with last. Dealing with them comprehensively in part I ensures that their importance is not overlooked. Students embarking on a study of intellectual property law for the first time should be made to understand at the outset that the intellectual property rights conferred by statute and the common law are only as valuable as the remedies and enforcement procedures provided in cases of infringement.

The second innovation as regards setting out is the sequence of the following parts. Instead of starting with patents or copyright which are the regimes traditionally dealt with first, the authors begin with confidentiality. The authors have chosen to deal with the various regimes in the order in which an inventor or creator is likely to have recourse to them from the "discovery" of the original idea or invention, through to its development and exposition, and finally its commercialisation.

Thus, Part II deals with confidentiality and the circumstances in which an idea, not in the public domain, can be protected at common law. Once an idea has been reduced to writing or recorded it may be protected by copyright which is the subject of part III together with the system for registering designs.

Chapter 9 within part III deals with the protection of computer technology. This is one area where the law has failed to keep pace with technological change. The authors deal comprehensively not only with the protection provided by the *Copyright Act 1968* (Cth) for computer programs but also with the *Circuit Layouts Act 1989* (Cth). They discuss the extent to which there is copyright in the "look and feel" of a computer program in the United States and the implications of the *Autodesk case* (*Dyason v Autodesk Inc* [1990] 19 IPR 399) in Australia.

Part IV deals with the patent system for protecting ideas that are inventive. This part covers not only the *Patents Act 1952* (Cth) but also the *Patents Act 1990* (Cth) which came into force on 1 May 1991. Chapter 15 within this part contains an excellent discussion on biotechnology and the legal issues of patenting life forms, another example of the law's inability to keep pace with technological change. The *Plant Variety Rights Act 1987* (Cth) is also considered within this chapter.

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