

## Book Reviews

### Gender, Crime and Punishment

By Kathleen Daly

Yale University Press, 1994, pp xi, 338, \$66.95 (hbk)

Midway through her book, Kathleen Daly points out that moral philosophers rarely consider sentencing practices in courts, and criminologists often do not contemplate the moral aspects of their work. Daly cites Nigel Walker approvingly, claiming that her aim is also 'to promote the amphibian way: to lure philosophers onto dry land and penologists into deep water'.<sup>1</sup> She succeeds in this interdisciplinary aim. *Gender, Crime and Punishment* offers both a detailed examination of court proceedings and a more thoughtful consideration of broad issues of equality and inequality in criminal law.

Daly's aims in *Gender, Crime and Punishment* are well suited to interdisciplinary work, as she examines the different ways in which men and women are punished and sentencing strategies are used in these decisions. This criminological study is grounded in the proceedings of the New Haven judicial court between 1981 and 1986. It includes a statistical analysis of traffic through this court and an inquiry into ways of thinking about this information. Daly examines the value of current criminological thought, especially feminist criminological theory, in interpreting the evidence of court records. Her work therefore has implications for lawyers and judges, as well as legal theorists, feminist commentators and criminologists.

*Gender, Crime and Punishment* is structured around two issues: the proportional presence of men and women in court and sentencing practices. The first section approaches distribution of punishment quantitatively and qualitatively. Daly examines a wide sample of approximately 400 cases which are analysed statistically. A further 40 cases are subject to deep analysis, involving a detailed examination of profiles of the offenders and a pairing of similar male and female cases. This enables Daly to develop a gendered statistical consideration of court proceedings and focus on the precise issues of comparability, consistency and commensurability in the deep sample studies. Daly's most important findings stem from this combination of quantitative and qualitative factors.

1 N Walker, *Why Punish?* (Oxford University Press, 1991) p vii, cited in Kathleen Daly, *Gender, Crime and Punishment*, p 174.

A methodological implication of Daly's approach to the sociology of crime is that the impact of gender on evidence given to the court is made clear. Daly notes that she coded stories about crimes told by people in the deep sample crimes, and analysed these with the assistance of a computer. The computer-generated results showed fewer differences between male and female crimes than were apparent when the crimes were read in a straightforward way. So, for example, after the coding, women appeared as assertive as men and were as likely to use weapons in robbery cases, whereas the overall impression of the evidence was that women were more marginal participants in crime. This suggests that information about mitigating circumstances given to court officials was, in itself, subject to gendered influences. By combining quantitative and qualitative factors in the analysis of the case records, Daly offers insight into the nature of court records and the biases and assumptions they embody.

Viewed in this way, women in the deep sample appear to have been more skilled in negotiating with officials and minimising their actions than men, and thus their versions of the crime acts seemed less serious. Men, on the other hand, were less able to present their crimes in ways acceptable to the court. The official accounts of these crimes cannot be taken as gender-neutral. The implication of this is, of course, that the daily influence of gender on life cannot be divorced from the dramas of the criminal courts. Daly skilfully shows that the narratives of crime have multiple layers of meaning and the base records should not be taken as a clean slate, free of gendered implications.

Having developed a comparison between the punishment of men and women in the wide and deep samples, Daly critiques the justifications for sentencing given by judges at New Haven. This is a particularly important aspect of *Gender, Crime and Punishment* as few studies of court practices in this area have been undertaken. Her focus is on differences in the use of retributive and utilitarian justifications in sentencing men and women. It is unfortunate, however, that the number of cases subject to analysis was reduced due to difficulties in the transcription of records; not all deep sample cases were considered. Despite this, the examination of sentencing strategies is handled carefully and the implications of race, as well as gender, are teased out in minute detail.

Both sections of *Gender, Crime and Punishment*, the presence of men and women in the courts, and the examination of the principles behind sentencing, are informed by an extensive knowledge of contemporary debates in criminological theory. The value of applying these

theories to the evidence of the New Haven court is constantly assessed. In this way, theoretical issues are tested and retested throughout the book.

With the exception of the difficulties in obtaining sufficient cases to examine the influence of sentencing theories on sentencing practices, *Gender, Crime and Punishment* moves smoothly and coherently from point to point. The only area which could be improved is a minor, stylistic one in the presentation of the statistical information. The tables sometimes merge with the text in a disconcerting fashion, causing some confusion.

On the whole, *Gender, Crime and Punishment* is a clearly written book which makes available information regarding current court practices and contemporary debates in feminist criminological theory. *Gender, Crime and Punishment* should be of interest to practising lawyers and judges, legal theorists and feminist legal interpreters as it neatly shows the value of an interdisciplinary approach to legal studies.

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## **The Constitution of the Commonwealth of Australia Annotated**

**By Richard Lumb and Gabriel Moens**

**5th Edition, Butterworths, 1995, pp 1, 676, \$85 (pbk)**

There are two ways to organise a text on any area of law based on legislation, including the law of a written constitution. The first is by organising the book by reference to topic and basic doctrines; the second is by organising it as a commentary on the legislation.

The former approach has been more popular in constitutional law in this country for a number of reasons. First, the nature of the Australian Constitution does not lend itself easily to annotation. It is short and expressed in general terms so that the bulk of constitutional law consists of decisions of the courts, especially the High Court, and doctrines which they have developed, rather than the text itself. Many constitutional law doctrines are, in any case, derived from the whole document or at least from a group of provisions, making a commentary on the text difficult to organise. Secondly, the idea of an annotated Constitution reflects a philosophy which is out of favour among

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