

***New Directions for Law in Australia: Essays in Contemporary Law Reform*, edited by Ron Levy, Molly O'Brien, Simon Rice, Pauline Ridge and Margaret Thornton. Canberra: ANU Press, 2017. pp. xiv + 661. RRP \$70.00 (print version).**

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Proof exists that Law Reform Commissions can still discharge a distinct and effective role in the reform of law and legal policy. In February 2017, some months after the essays that make up this important book were presented at an Australian National University Conference, the Attorney General issued terms of reference for an inquiry by the Australian Law Reform Commission (ALRC) into the incarceration rate of Aboriginal and Torres Strait Islander peoples. Judge Matthew Myers was appointed part time Commissioner, an expert advisory panel of academics and practitioners was installed, discussion paper drawing together the findings of previous inquiries was issued in July, 149 consultations were undertaken in the community, 121 submissions were received and by December an incisive and plainly written report analysing the causes and including 35 recommendations for reducing the rate of incarceration was delivered.

The ALRC Report is a blueprint for any Government seriously concerned to address the most recalcitrant problem of social justice in our society. It recommends the establishment of a new Aboriginal-controlled body that will promote 'justice reinvestment', that is, the diversion of resources now used in the criminal justice system to provide instead for 'community-led, place-based initiatives that address the drivers of crime and incarceration'. It supports the expansion of community-based sentencing options and recommends that courts give overt recognition to the 'unique systemic and background factors' of Aboriginal people when they are making sentencing decisions.

In doing so, the Report recognises that at present the law irresistibly oppresses the lives of many Aboriginal communities and that its reform can only be effective if conventional legal assumptions about authority and retribution are in significant

degree reconceptualised to take account of the historic circumstance, the social conditions and the cultural differences that Aboriginal people experience.

In this regard, the Report vindicates observations made by Professor Margaret Davies of Flinders University in the opening chapter of the book under review concerning changing presuppositions around the nature of the law and its reform. It justifies also the sensible if despairing argument of Professor Lorana Bartels of the University of Canberra in her contribution: that all criminal law policy should 'henceforth be focussed around the central issue of whether any proposed reform will increase or decrease our prison population'.

We are confronted by a paradox. On the one hand the activity of Law Reform Commissions has been much reduced in recent decades by governments indifferent to the benefit of expertise and hostile to an expansive public sector. On the other hand the numbers of Law Schools has been substantially growing and the cohort of legal academics capable of providing critical support to the range of institutions that might drive law reform has significantly increased. *New Directions for Law in Australia* collects over 50 essays to demonstrate the point.

The section concerned with commercial and corporate law addresses issues of high relevance to contemporary society: the reform of tax laws to overcome inequality; better protections for those working in the 'gig economy'; the mitigation of the risks of mortgage lending; the reform of whistleblower laws in the private sector generally and the legal profession specifically. The chapter by Russell Miller explains the sometimes difficult but generally encouraging progress in the simplification and modernisation of competition and consumer law reform driven particularly by the Productivity Commission.

Professor Grantham of the University of Queensland has written a decisive critique of the state of corporations law. He shows how the particular forms of regulation adopted in the Corporations Act are making a complex body of statutory and public law ever more private. Policy goals remain 'public regarding' but actual regulatory procedures rely not on 'direct prescription backed by sanctions and imposed by external regulators such as the courts' but upon internal self-regulation. This is a confounding problem because 'as a user guide or statement of first recourse for those involved in [the day to day operations of] the corporate enterprise, the Act may as well be written in Sanskrit'. I trust that this contribution has been drawn to the attention of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry established in late 2017.

Some sections of the book are necessarily more diverse: one section deals with a dozen aspects of possible private law reform and another with a dozen public law

reform topics, although data privacy is a notable omission from both. A section dealing with ethics, practice and education in the legal profession deserves separate consideration.

The section concerning environmental law deals with issues in a critical realm. Australia's system of environment law is complex but not comprehensive. It is often inconsistent, often poorly enforced and it also fails often to recognise Aboriginal rights and interests in the land. It is certainly not suited to deal with the unprecedented crises of habitat destruction and climate change with which we and our children are now faced. In that context, Professor McDonald of The University of Tasmania discusses principles to be adopted for a resilient and adaptive system of future environmental law and governance that is able to respond flexibly to change. And Paul Martin, Amanda Kennedy and Jacqueline Williams of the Centre for Agriculture and Law at the University of New England discuss the kinds of measures that need to be introduced to establish a 'process of continuous improvement in the effectiveness of our legal arrangements for rural biodiversity protection'.

Perhaps anticipating the later and sensational revelations about the mismanagement of water resources on ABC Four Corners, Professor Holley of the University of New South Wales sets out the principles of governance and regulation that need to be adopted to entrench the National Water Reforms of recent years and Virginia Marshall discusses Indigenous rights to water as a human rights question. Professor Stoianoff of the University of Technology Sydney examines the slow progress toward the incorporation of Indigenous knowledge into environmental management. Professor Watson of the University of South Australia begins the whole section arguing radically that we need to move beyond recognition through native title laws to consider the incorporation of the Indigenous law that has always existed to manage the land into the mainstream.

The importance of issues such as these to the future health of our society is inversely matched at the present time by the recalcitrance of the political circumstances afflicting the whole field: government sponsored environmental law reform has been stifled. However academic lawyers have in this context again demonstrated the potent contribution they are able to make, in this case constituting themselves as if they were a Law Reform Commission.

In late 2017, fourteen of Australia's leading environmental lawyers, including several contributors to the book under review, published a Blueprint for the Next Generation of Australian Environmental Law (see <http://apeel.org.au/>). Their proposal is accompanied by eight technical papers suggesting comprehensive changes to laws, regulations and not least to institutional arrangements for the administration of the

law. 'There is a limit,' they say, 'to what laws can achieve, but they are an essential part of any robust system of environment governance. Environmental laws should effectively enable the protection, conservation, management and where needed, restoration of our national heritage. The effectiveness of our environmental laws must be founded on the values of integrity, transparency and accountability, in both their formulation and enforcement. These laws must also be kept up to date, so that they continue to reflect our ever- changing environmental, social and political conditions'.

It is hard to think of a better description of principled reform of the law of the kind supported by New Directions for Law in Australia. We might hope that this publication will become a regular event.