

Reviews

***Ethics, Law and Medical Practice* by Kerry Breen, Vernon Plueckhahn and Stephen Cordner, Allen & Unwin 1997; 400pp; \$39.95.**

In the foreword to *Ethics, Law and Medical Practice*, Justice Michael Kirby introduces the reader to some interesting contemporary issues in medico-legal studies. He mentions the impact on medical practice of new information technologies, the role of doctors in a society with rapidly changing values and the ethical issues raised by radical new projects such as the Human Genome Project. These are fascinating subjects for discussion and, unfortunately, all are barely referred to in the text itself, which is a standard text for doctors, giving a broad overview of the legal and health administration systems in Australia.

This book is aimed only at medical practitioners. It seems to cover most relevant aspects of law that would interest doctors in their practice; doctors as expert witnesses; as professionals in an administrative system; and as the subjects of complaints of misconduct, incompetence and criminal activity. One can imagine doctors using this book as a rough guide to their own legal liability (Can I be sued for that? Was that sexual misconduct?), but not one that their lawyers could use for any definitive outline of medical law. It is simply too broad to be of any use as a legal text – the discussion of tortious liability, for example, is brief in the extreme – and there is no reference to case law. There are also

sections giving a very broad idea of the workings of the Australian legal system, such as would be found in a first year law text.

The most useful aspect of the text for lawyers is to give them an idea of how the Australian health administration system works.

- Karen O'Connell

***A Guide to the Evidence Acts 1995 (NSW) and (Cth)* by J D Heydon; Butterworths 1997; 2nd edn; 231pp; \$65.00.**

Evidence guru, J D Heydon, has written a second edition of his *Guide to the Evidence Acts 1995 (NSW) and (Cth)*. Half the book is a commentary on the Act; the rest is a consolidation of the NSW and Commonwealth Acts. The legislation usefully cross references the commentary. This book complements Heydon's seminal text *Cross on Evidence*. The guide is reproduced in *Cross on Evidence* (looseleaf).

The commentary raises a number of important questions, such as:

- Is the Act a code?
- What will be the effect of judicial development?
- How can the former common law be used?
- What is the use of law reform materials in the interpretation of the Act?

The guide is clear and concise. To highlight the effect of provisions in the Act, Heydon usefully compares

various state legislation with the Act, for instance, the commentary on the compellability of spouses.

While this commentary provides a good overview to the Evidence Acts, I still favour using Stephen Odgers' *Uniform Evidence Law*. Odgers' commentary is easier to use and provides a far more sophisticated level of detail. Heydon, unlike Odgers, does not place enough emphasis on the Australian Law Reform Commission's Evidence Reports 38 and 26, which form the basis of the Act. Other reasons for preferring Odgers' book are that it discusses more judicial decisions and includes other relevant legislation and a table of notices.

- Miiko Kumar

***Codes, Ethics and the Professions* by M Coady & S Bloch (eds); Melbourne University Press 1996; 240pp; \$29.95.**

When leading American legal philosopher and ethicist David Luban visited Australia recently, he presented a paper arguing that traditional notions of law as a profession with public responsibilities are inconsistent with adversarial ethics. Adversarial ethics, Luban submitted, generate a vision of legal ethics that he calls 'non-accountable partisanship', which requires advocates to advance their clients' interests with the maximum zeal permitted by the law. The advocate is morally responsible for neither the ends pursued by the client (for example, to put another party out of business by through the cost of litigation) nor

the means of pursuing those ends, provided both means and ends are lawful.

The interdisciplinary group of contributors to this book explore similar issues at the intersection of ethics, codes and laws. The latter chapters put these issues into the context of three different professions - psychiatry, nursing and journalism - but the discussions are of broad application to all professions, including the law. For example, Robert Fullinwider argues that professional codes serve the role of connecting a profession to a moral purpose, helping professionals to see their practices as 'performances for the public good' and more than just a skilled job. To what extent do current legal ethics fulfil this role?

The essays in this book will be valuable to all those with an interest in the ethical dimensions of professional work and in the interface between morality, public interest and professional self-interest.

- Bruce Alston

Imagined Destinies - Aboriginal Australians and the Doomed Race Theory, 1880 - 1939
by R McGregor,
Melbourne
University Press,
1997; 256pp; \$29.95.

This book traces the development and impact of the 'doomed race theory' in European intellectual thought, with its origins in the enlightenment notions of progress, reason and the unity of man, through to the race theories of the nineteenth century and Victorian notions of morality.

In its various manifestations, this theory was that the 'full blood' Aboriginal race was doomed to extinction.

The theory was extremely influential on the development of government policy towards Aboriginal people from the turn of the century through to the 1930s. While there was no single group of theorists who developed a consistent, scientifically provable set of arguments explaining the theory, McGregor demonstrates it was widely held.

The book is written in an easy to read style, reminiscent of McGregor's colleague, Henry Reynolds. Like Reynolds' work, McGregor has relied heavily on primary sources and made a deliberate decision not to 'correct' the language or views expressed by the people of the time. The book is more powerful as a result. Instead, McGregor focuses on the absurdities and inconsistencies of the views expressed. An example is the 'extravagant theorising' of W.L. Cleland in 1917, who postulated that Aborigines were close on the evolutionary scale to orangutans because they carried small items of value in the lobe of their ears, much like orangutans do.

This book is an important resource on an aspect of our history that has not received much attention to date. It fills another previously empty page in the shameful history of white colonisation of this nation.

- Darren Dick

Police Ethics by
Seumas Miller, John
Blackler & Andrew
Alexander; Allen &
Unwin 1997; 248pp;
\$29.95.

This book examines how ethical issues impact on policing, beginning by explaining, in simple terms, what is meant by ethical judgments and applied ethics. It discusses the special nature of policing, whereby police are given powers and rights denied to other citizens to preserve law and order. This can bring into sharp

relief the imminent tension between means and ends in law enforcement. In particular, this tension is palpable when the police take apparently illegitimate action to achieve what they consider to be worthwhile objectives. This may take the form of 'noble cause' corruption.

The book uses real life case studies to examine ethical questions. For example, one case study concerns the police decision in the New South Wales 'Granny Serial Killer' investigation not to break surveillance of the suspect when he visited the house of a woman whom he soon after murdered. The police were outside the house while the murder took place unbeknown to them. Did the police give sufficient consideration to the need to protect an innocent person from harm? Were they too preoccupied with 'nailing' John Wayne Glover at the expense of a woman's safety?

There are also interesting case studies related to Frank Serpico, the NYPD whistleblower, and *Dirty Harry*, Clint Eastwood's manifestation of the hero cop who gets results and obtains real justice by forgetting the rule book. *Dirty Harry* reached icon status in American law enforcement in the 1970s when there was a rollback of reforms and attitudes generated in the 1960s.

The case studies examine how police exert their authority, police discretion, the use of coercive and deadly force, corruption, police culture, and ethical rules in investigation, interrogation and custody. The authors also blend in research material and commentary into their case analysis.

This is a crisp and concise book that is a useful and timely addition to discussions on police ethics. It ought to be required reading for all police.

- Michael Barnett