

Kirkby, Diane (ed). *Past Law, Present Histories*. ANU E Press, Canberra, 2012. 230 pp. ISBN 97819222144027.

Compiling a cohesive and rational book from an eclectic conference is a difficult task. *Past Law, Present Histories* accomplishes this task to a large extent. The book, published last year, springs from the 2011 Australia and New Zealand Law and History Society (ANZLHS) Annual Conference in Melbourne. In this work, editor Diane Kirkby, presents eleven papers from that scholarly meeting. This review will not comprehensively cover each chapter but rather reflect on the nature and aims of the text using specific chapters as examples.

Three general points are worth noting before beginning specific analysis. Firstly, the text provides an insight into the wealth of scholarship being provided by female legal history scholars (ten of the eleven contributors are women). This demographic observation is pertinent because not too many years ago, a volume of this nature would almost certainly have been dominated by male scholars, reflecting the demographics of those involved in the discipline. *Past Law, Present Histories* clearly demonstrates a changing profession which is both more diverse and more representative.

Secondly, the text also provides evidence of the strong interdisciplinary nature of legal history work in recent times. *Past Law, Present Histories* features jurisprudence, feminist theory, criminology and linguistics, amongst other disciplines. While it could be observed that this is not 'traditional' legal history, it is very much a reflection of 'modern' legal history.

Thirdly, the text reflects the growing strength of the law and history community in Australasia. The annual ANZLHS conferences attract approximately 100 attendees, most of whom are presenters. The conference is increasingly international, attracting scholars from North America, South-East Asia and Britain in particular. The ANZLHS provides a home for legal history in this part of the world and this text reflects its commitment to diverse scholarship and interdisciplinarity. This is very much an academic book for an academic audience but that academic audience is a broad one.

Some of the chapters in the text clearly demonstrate the importance of a wider colonial approach to writing legal history. Not surprisingly, this is most obvious in the section entitled "Law and Colonialism". Anna Johnston's chapter on Lancelot Threlkeld and the settler-colonial humanitarian debates makes connections between the Australian colonies and New Zealand, for example, through the career of Samuel Marsden. It can also be compared and contrasted with the following chapter by Shaunnagh Dorsett on Maori testimony before the New Zealand courts in the early Crown Colony period. Both chapters carefully analyse the experience of indigenous peoples before the early colonial courts. The legal disabilities suffered by Aboriginal Australians and Maori clearly hampered the ability to assert rights in these legal systems. These localised examples can be linked back to wider colonial practice and specific instructions from the Colonial Office in London, as aptly demonstrated by Dorsett.

In Dorsett's chapter, the pivotal role of newspaper reports, in the absence of official law reporting, is clear. Once Dorsett begins specific discussion of cases, virtually every reference includes a newspaper report. The creation of the New Zealand National Library's "Papers Past" online database is radically changing the way in which New Zealand historians approach research, especially in historical eras in which newspapers provide the main source of archival information. This development is also apparent in other jurisdictions. The ease with which one can access information through keyword searching results in quicker and more efficient research. The historiographical challenges of using newspaper reports, for example those relating to accuracy and bias, remain.

The first chapter in this section of the book focuses on the nineteenth century slave-trading trials of Samo and Peters. Emily Haslam argues that these fascinating trials can be seen as the beginning of international criminal law. As with many conference publications, it can be difficult to seamlessly integrate every chapter. Haslam's work fits with the section theme but, in terms of jurisdiction, there is an awkward jump from this chapter on Sierra Leone to the predominating Australasian chapters.

The next section, entitled "Law in Community", is led by Stefan Petrow's work on prevention of animal cruelty in Australia (and in particular, Tasmania) during the nineteenth century. At first glance, this appears a rather narrow topic but Petrow is able to skilfully contextualise it and provide a thoroughly engaging account of the limited ability of colonial authorities to stop animal cruelty during this era. Like Dorsett's chapter, Petrow is heavily reliant on newspaper reports as primary source material.

In the following chapter by Jennifer Anderson we encounter a key theme of the overall book, the importance of viewing legal historical developments in relation to gender, race and/or class. Anderson's chapter on working-class communities and carnal knowledge cases in Victoria during the first few years of the twentieth century is a revealing and harrowing read. While history should not necessarily be written to inform the present, the conclusions reached by Anderson have clear relevance to recent events in Australasia, in particular, the 2013 West Auckland sexual assault controversy.

The clear distinction between the private and public spheres in the late nineteenth/early twentieth centuries is also clear in Debra Powell's chapter on the use of the parental right to physically discipline in New Zealand court trials from 1890-1902. The lack of protection for children within the domestic sphere is clearly evidenced by Powell's comprehensive research. Unlike Anderson, Powell specifically links her findings to the present and, in particular, the recent debate in New Zealand over the right to physically discipline children. *Past Law, Present Histories* is refreshingly free from factual errors, but the odd one creeps in, for example, the Coromandel district is actually east of Auckland, not north-west (page 114). In another example of the power of "Papers Past", Powell draws on a range of newspaper reports from a variety of papers, including the very localised Hawera and Normanby Star.

One challenge for historians looking at gender, race and class, especially in the nineteenth century, is the elitist nature of much of the source material. Libby Connors

wrestles with this challenge in her chapter on women, children and violence in Aboriginal law. ‘Aboriginal-centred history’ should arguably be at the heart of Australian colonial scholarship but who should write it? Aboriginal historians? Non-aboriginal historians with expertise in post-colonial theory? Connors’ chapter provides context to these questions using both primary sources and historiographical debate.

The viewing of legal historical developments in relation to gender, race and/or class is most prominent in the section entitled “Law as Theory and Practice”, but this approach actually permeates the entire book. Ann Genovese’s thoughts on writing feminist legal history using the concept of genealogy and Diane Kirkby’s research on labour market regulation both engage with socio-legal research in a way that demonstrates the importance of ‘new’ ways of approaching legal history. In fact, this book celebrates these ‘new’ ways, and none of the chapters reflects the more traditional, narrow approach to legal history scholarship. The final chapter looks at the Stolen Generations cases. Thalia Anthony and Honni van Rijswijk provide a legal critique of the concept of parental ‘consent’. The conclusion is that the courts should be following historians: “[The courts] will continue to need to rely on historians to unveil consent as a tool of disguise and a technique of force in particular circumstances.” (page 208) This is a worthy aim but given the legal profession’s dedication to black-letter analysis, it is unlikely that most lawyers would choose to actively engage with the sophisticated theoretical arguments presented in this chapter. Aleksandra Hadzelek’s chapter on the memory and legacy of Franco in Spain is fascinating but, as with the first chapter in section one, it sits somewhat awkwardly amongst strongly Australasian case studies.

Past Law, Present Histories reflects its conference origins both in the fascinating and diverse topics chosen and also in the challenges of crafting these diverse topics into a coherent structure. For anyone interested in the state of legal history scholarship in Australasia, this book is a must read. The reader will find that the scholarship is rich, sophisticated, engaging and original.

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