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**Bruce Kercher**. *An Unruly Child: A History of Law in Australia.* Sydney: Allen and Unwin, 1995. xxi + 248 pp. A$29.95 (cloth), ISBN 978-1-86373-891-0.

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"A. Not so broadly as the questions imports, tho' the principles of British Law have been generally considered proper to influence every decision but not as being British Law but as consonant to essential Justice and Right."–*Historical Records of Australia,* vol. 4/1, p. 802, cited by Kercher (p. 63).

Throughout *An Unruly Child*, Bruce Kercher draws on a multitude of evidence, including this transcript of an interview between a judge and a commissioner in the 1820s, to support his argument that British common law was adapted to Australian circumstances from the earliest days of colonization, and that a distinctly different form of law existed in Australia.

This thesis stands in opposition to the received wisdom of legal theory and legal history–it has been generally accepted that ideas of precedent and of superior courts bound Australian law closely to the British model. *An Unruly Child* is not, however, simply a book of legal theory; the focus is on the social history of law. Kercher concentrates on the way the law was used, presenting his vision of the distinctiveness of Australian law in a dozen vignettes of the social implications of law in the period 1788 to 1992.

*An Unruly Child* is arranged chronologically, beginning with the arrival of British common law in Australia with the First Fleet. The book is divided into three sections that roughly follow constitutional changes. The first deals with the early colonial period (1788 to around 1820); the second covers the moves toward responsible government in Australia (roughly 1820 to 1901); and the third the post-federation period (1901 to 1992). While these sections range widely over areas affected by the law, they are well researched and extensively footnoted.

The main problem with *An Unruly Child* is that it is episodic. Although the book is tied together by the overall argument and although there are efforts to use constitutional changes to organise the material, there is a tendency to leap from theme to theme. In one chapter alone Kercher discusses the Colonial Laws Validity Act of 1865, notes the conflicts between selectors and squatters, touches on mining law and the Eureka stockade, addresses nineteenth-century company law, mentions the development of ideas of liability in railroad law, considers the use of double standards in divorce and the disadvantages this held for women, describes the ways women claimed the vote, explains the beginnings of early industrial relations dispute resolution, and explores the application of White Australia policies. Despite the unity of his overall theme–the argument that in all these areas Australian lawmakers moved away from letter-of-the-law British models–the constantly changing focus is frequently overwhelming.

Kercher's problem is that the law influenced (and continues to influence) almost every aspect of Australian life. Working, as he does, with an argument about the overall development of the common law, he takes material from a multitude of sources and addresses a wide variety of themes. He writes biographical sketches of governors, judges, and legislators. He calls on the evidence of newspapers, law reports, correspondence, and legislation. He addresses the development of legal theory and shows how this was related to social and legal practices. His difficulty is, in short, that he has too much to say and too much evidence to call on.

In some ways this approach strengthens Kercher's arguments about the distinctiveness of Australian law. It is clear that he found a great deal of evidence to support his claim that British common law traditions were not consistently applied to Australian situations, and it is equally clear that he sifted through material on virtually every aspect of Australian history to do so. On the other hand, it would also have been desirable to offer a deeper and more thorough consideration of a few aspects of Australian law which could have argued the same point more comprehensively.

*An Unruly Child* slides from point to point, carried on by the force of the overall argument and not stopping to

address any themes in depth or detail.

This means that *An Unruly Child* is a wide-ranging and fascinating book, but it also means that it is difficult to see which audience it will engage. Its legal argument is too rarefied for most general readers of Australian history, yet its range of themes and chronology too diffuse for most legal specialists. This is unfortunate, because *An Unruly Child* is an engagingly written attempt to combine social and legal strands of Australian history. Those who do read the book will appreciate the effort that went into encompassing social and legal genres of history.

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