

Contempt of Court, by CHRISTOPHER MILLER. (Oxford University Press, 2nd ed., 1989), pp. i-lix, 1-492. Cloth recommended retail price \$130.00. (ISBN 0 19 825478 4).

Contempt of court covers a myriad of instances, ranging from the momentous to the trivial. A large trade union defies a court order and is subjected to massive fines increasing by the day; a State Premier publicly vouches for the innocence of a High Court judge who has been charged with attempting to pervert the course of justice; a rape trial is aborted, and never recommenced, because a newspaper reports counsel's arguments, in the jury's absence, as to whether an alleged confession should be admitted in evidence; a husband chooses to spend three years in gaol rather than comply with court orders to transfer property and money to his former wife; defence counsel suggests to a jury that the judge's behaviour during the trial has been as surprising as if an Australian Rules referee ran on to the field wearing a Collingwood jumper; a witness leaving the witness-box hands to a member of the jury a rolled-up piece of paper (which was apparently a cartoon about juries). These recent events in Australia span a wide range of social and legal contexts: industrial relations, domestic relations, media coverage of court proceedings and the limits of a barrister's duty to press his or her client's case, to name a few. The factor common to them was that they were contempts of court, or formed the subject of contempt proceedings. They were all held, or at least alleged, to constitute interference with the administration of justice in a manner warranting penal sanctions.

The detail and the complexity of the case-law (and, in England, the statutory provisions in the Contempt of Court Act 1981) determining whether instances such as these really do amount to contempt are enhanced by the detail and complexity of contempt procedures. These are a legal phenomenon on their own. Like a few other oddities of the law, such as proceedings for tax or customs "penalties", they borrow a bit from criminal procedure and a bit from civil procedure. Also thrown in are various ideas which are entirely unique – such as the notions of unlimited sentencing powers and of gaol sentences expressed to last *until* the prisoner agrees to do a specified act.

The great achievement of this excellent text on the English law of contempt is that it successfully manages to set out clearly, and to analyse with care and precision, this large, ungainly and decidedly distinctive body of law. As in the first edition, published in 1976, the early cases are given due attention, but the impact of the 1981 Act and of numerous highly significant cases since 1976 – in particular, the cases stemming from the *Spycatcher* litigation – is also very carefully assessed. Cases from Australia and other common law jurisdictions are given considerable prominence and there are many references to cases which are only reported in *The Times* or some other newspaper.

In the field of contempt, this last source is particularly important. Newspapers tend to be interested in contempt, partly because the facts are often colourful and partly because they wonder whether they might be the next to provide a contempt story for themselves and their rivals. Professor Miller's assiduous study of newspaper reports brings many rewards. He depicts, for example, the full horror of how both the popular and the 'elite' press dealt with the case of the Buckingham Palace intruder, Michael Fagan, in 1982. His account covers also the somewhat startling way in which several newspapers escaped contempt convictions by persuading the Divisional Court that some of their more lurid revelations regarding Mr Fagan constituted part of a discussion of "public affairs or other matters of public interest" (within the terms of a defence set out in section 5 of the Contempt of Court Act 1981), not merely a spot of public titillation. As another example, only newspaper reports and carefully researched texts such as this one are likely to contain the information that, even in the enlightened year of 1981, an accused person who has just been acquitted could be put in gaol for two days because he celebrated his acquittal by throwing up his hands in joy. (What if he had suffered the same fate there as Jamie Partlic, one wonders.)

Underlying this mass of specific facts, principles and procedures are a number of profound conflicts, the resolution of which within contempt law bears fundamentally on the status and role of courts and judges and their relationship to the community. Even the most trivial cases of courtroom misconduct reflect such a conflict, between the judge's claim to exert effective authority personally in the courtroom and the claim of the alleged offender to a fair trial by an impartial bench. Contempt law's treatment of so-called "scandalising" comments – published comments which, by impugning the integrity or impartiality of court or judges, threaten to undermine public confidence in the administration of justice – reflects a whole series of judicial value judgments about the public perception of the judicial function, the use of punitive powers to engender and maintain public respect for public institutions, and the importance of freedom of speech in democratic societies. In the field of family law, there are huge and intractable questions about the use of state force as a back-up for the intrusion of courts into deteriorating personal relationships, particularly when intense hostilities have been let loose between the spouses. Finally, there is an important historical dimension. A study of the development of contempt law and procedures and their unique characteristics casts many useful insights on the special position of the common law judiciary and the way in which it has built up and maintained special authority and prestige, *vis-a-vis* both the community at large and other organs of state power.

It is at this general thematic level that Professor Miller's book could, one feels, have more to say. It is not that issues of principle and value judgment underlying contempt are ignored. Due attention is indeed paid to

perceived defects in the law and to reform proposals. It is just that, particularly at the beginning of the book, an opportunity is missed to convey an impression of the 'grand sweep' of contempt law – its origins, its development over several centuries, the warring issues of principle with which it deals and some, at least, of its unspoken assumptions. This would seem preferable to the present highly analytical opening chapters, where the discussion of topics such as the similarities and differences between criminal contempt and the criminal law's concept of offences against the administration of justice, and the precise nature and significance of the distinction between criminal and civil contempt, is a little bit dry at times, and not always accessible to the uninformed reader.

This last comment is little more than a reviewer's gripe at the fact that no single book can ever deal with all aspects of a topic of any size. It is not intended to detract from the main message of this review, which is that the second edition of Miller on *Contempt of Court* is an immensely perceptive, thorough, successful and valuable analysis of contempt law. Although primarily written for an English market, its coverage of the common law generally and of Australian cases in particular is so thorough that in Australia – where there is still no local text, only another English text with a local 'pilot' – it must be regarded as a work of major importance.

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