Book Review

Scots Law Tales
John P Grant and Elaine E Sutherland (eds)
£20.00, Dundee University Press, 2010

This interesting collection consists of eleven chapters by eleven different authors exploring individual significant cases, a surprising number of which will be of particular interest to readers of SCOLAG Legal Journal. Throughout, the cases are placed in their historical and legal context and the individuals caught up in the cases are brought to life. The treatment of the private individuals involved is sensitive and respectful; the treatment of the legal and political actors is generally rather more robust though no less accurate so far as this reviewer is able to tell.

Criminal law is represented by Clare Connelly’s “A Great Miscarriage of Justice. Oscar Slater” which considers the 1909 murder trial and the many years of campaigning to secure an appeal for the wrongly convicted Slater in the face of unwarranted resistance from the establishment; Alistair Bonnington’s “Lawyers, Who Need Them? Sheridan v News International” which explores the first Sheridan trial in which the politician dispensed with legal representation and won a victory over News International and John Grant’s “Not Our Finest Hour. The Lockerbie Trial”, the title of the chapter being something of an understatement in light of the evidence of the fiasco that was the verdict and subsequent pronouncements by the Scottish legal establishment on the case.

Family law is represented by three cases focussing on different aspects of the law’s treatment of children. Elaine Sutherland tells the sorry tale of the state’s total failure to protect children from assault by their teachers in “Spare the Rod. Marshall, exposes the great reluctance of politicians to legislate to protect the rights and interests of the children caught up in the Orkney child abuse panic in “A Knock at the Door. Sloan v B: the Orkney Case”. Kenneth Norrie explores the complex and conflicting approaches in the Outer House, Inner House and House of Lords in relation to a failed vasectomy case in “Bring up Catherine. McFarlane v Tayside Health Board”. Former Commissioner for Children and Young People, Kathleen Marshall, exposes the great reluctance of politicians to legislate to protect children from assault by their teachers in “Spare the Rod. Campbell & Cosans v UK”. A significant proportion of Scottish society, whether as teachers or parents, seem wedded to the notion that while as adults they should be protected by law from being assaulted the same should not apply to the children they wish to beat.

Gavin Little recounts the story of Scotland’s best known constitutional case in “A Flag in the Wind. MacCormick v Lord Advocate”. There, in a failed challenge to the styling of the present queen as “Elizabeth the Second of the United Kingdom of Great Britain and Northern Ireland” (after all there has never been an Elizabeth the First of the UK and England ≠ the UK, whatever the Unionists think), Lord President Cooper stated obiter that the “principle of unlimited [parliamentary] sovereignty is a distinctively English principle which has no counterpart in Scottish constitutional law”. It should be noted that, despite the Acts of Union in 1707, England and Wales has kept its own particular legal system and traditions rather than adopt Scots law.

Finally there are four interesting chapters on subjects of perhaps less direct relevance to SCOLAG readers. These are Elspeth Reid’s “The Snail in the Ginger Beer Float. Donoghue v Stevenson”, David Carey Miller’s “St Ninian’s Isle Treasure. Lord Advocate v University of Aberdeen and Budge”, Sheila McLean’s “Giving Up or Letting Go. Late Hospital NHS Trust v Lord Advocate” and Robert Rennie’s “Folly, Guilt and More Folly. The McCaig Cases”.

All in all a stimulating and entertaining read but it is hard to conclude anything other than that Scots law is often poorly served by those in a position of power who seem happy to act in their own self-interest or in the supposed special interests of their class or profession. Whether it is the sacking of the police officer who revealed police mishandling of the evidence in the Oscar Slater trial or the refusal of the police to investigate who really murdered the victim; the destruction of John MacCormick’s legal career by his fellow partners and the petty attitude of the then Dean of Faculty; Lord Justice Clerk Wheatley’s dreadful decision in Stewart v Thain in 1981 when he upheld the “right” of a teacher to assault a child in a most dubious manner; there is a sense that this is a pageant of privileged professional men and women (judges, senior police officers and lawyers) making decisions in the interests of privileged professional men and women.

Lest one think that doubtful behaviour is restricted to a previous generation of legal actors it may be noted that Alistair Bonnington appears to take a very dim view of Lord Turnbull’s performance during the Sheridan trial and concludes that his behaviour made it “seem pretty clear where his sympathies lay”; Bonnington further speculates that “the fact that the Faculty of Advocates came out of this whole affair so badly might have been a factor in leading Lord Turnbull to be so anxious that perjury proceedings were considered by the Crown”. Lord Turnbull was also involved in the at Megrahi case as a prosecutor. But things are not all bad – special mention may be made of Sheriff Kelbie who dismissed the application by the children’s reporter to retain the thoroughly traumatised Orkney children in state custody without hearing the evidence as the proceedings by the reporter and the social work department had been “so fundamentally flawed as to be incompetent”. Such action contrary to the demands of the professionals and in the interests of the powerless gives one some hope.

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