Drawing up contracts, settlements, wills, company articles and so on looms at least as large in a lawyer's life as fighting court cases. And arising from this, is there a danger of giving the students the one-sided impression that most cases are borderline and that the lawyer's main problem is to decide what side to come down on? May not the student lose sight of the fact that the lawyer spends most of his time—in so far it concerns law rather than fact—simply in looking up the law, in translating statutes, orders and cross-references? Perhaps an introductory book on the legal process is not the right place to show the student this, but it must come in somewhere. Lastly, should more be said about extra-legal factors entering into the law-making process, (whether of the courts or of the legislature) and something about the difficulty of providing general propositions about social and economic factors on which policy may be based within the context of the traditional common law trial?

All this is not to deny that *Maher, Waller and Derham* is a highly successful venture. Student reaction here has been as favourable as that of the teachers. As an introduction to the legal process through the cases it should establish and maintain its place. If future editions are somewhat shorter, and if an index could be incorporated, the student would benefit. Meanwhile it only remains to congratulate the authors on their achievement.

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Cases and Materials on Criminal Law and Procedure, edited by M. L. FRIEDLAND. (University of Toronto Press, Toronto, 1968), pp. i-xiii, 1-568. Canadian Price: $20.

This casebook was designed for the basic criminal law course taught in Canadian law schools and is a revised version of a temporary set of materials used, presumably with considerable success, in a number of Canadian universities in 1967. Being Canadian oriented and focusing, as it must, primarily on the provisions of the Canadian Criminal Code and provincial legislation, the book is necessarily limited in its usefulness for legal audiences in this country. Australian teachers of criminal law will, however, find it an interesting exercise to compare the approach of this work with that of Brett and Waller, *Cases and Materials in Criminal Law* (2nd ed. 1965) which is our equivalent basic casebook for criminal law courses. Comparison of publications can, of course, give no clue as to their relative effectiveness as teaching tools—too much depends on the use each individual lecturer makes of the materials before him—but, taking content alone, one can discern a marked variance between what is perceived by the respective Canadian and Australian teachers as minimal in a criminal law course.

In essence, the difference lies in the greater extent to which the Canadians regard it as important to include criminological material in their studies. This concern with the practical realities of the administration of the criminal law is well established in United States law schools and, as manifested in the book under review, is finding expression in Canadian criminal law courses. But, as yet, it is largely unreflected in the teaching of criminal law in Australian universities. There is, however, no reason to believe that the winds of change which have already affected the teaching of this subject in our sister dominion will pass us by undisturbed. No criminal law teacher present at the 1969 Perth A.U.L.S.A. conference could fail to be impressed by the almost unanimous agreement amongst speakers that, within ten years or less, every law school in Australia would be teaching criminology either as part of, or as an adjunct to its criminal law courses.

Nor can one disregard Professor Rupert Cross' reiteration, at that conference, of the theme of his inaugural lecture as Vinerian Professor of English Law at Oxford (*Paradoxes in Prison Sentences*, 1965) that the study of the criminal law must be broadened to meet the challenge of contemporary legal developments. The undeniable trend towards a much needed simplification of the criminal law will, in time, relieve the law teacher of the futile burden of trying to teach students the impossible complexities of the historical accidents of the law of larceny. Also, with the final abandonment of capital punishment as a sanction, the intricacies of the law of

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murder will have lost much of their compelling interest. The saving of teaching time thus achieved should then be devoted to more immediately significant issues, particularly the problems of criminal responsibility and sentencing of offenders. With this as background, Friedland's book should evoke in Australian criminal law teachers something more than passing curiosity for it expressly purports to mirror these substantial developments in the teaching and practice of criminal law.

Professor Friedland is possibly best known for his study of some 6,000 criminal cases tried in the Toronto magistrate's courts between late 1961 and early 1962 (*Detention Before Trial*, 1965). The aim of this project was to examine the extent to which defendants in cases which came before these courts were held in custody before trial, and to determine the relationship between this pre-trial detention and the ultimate outcome of each case. This concern of his with the criminal law as a powerful instrument of social policy rather than as a set of refined theoretical constructs is amply reflected in the casebook under review. The work comprises nineteen chapters of varying lengths which are occasionally supplemented by diagrams, photographic reproductions of court documents and extracts from newspaper cuttings. One section of the book, dealing with the admissibility of relevant but prejudicial evidence, is starkly illustrated by a photograph of the body of a murder victim yet, in another section, the reader will find the seriousness of the text leavened by the inclusion of a humorous cartoon.

Any elementary text or casebook understandably concentrates on communicating the basic elements of the field of law under discussion, but this casebook carries the emphasis or fundamentals in criminal law further than others, for at no stage in the work does the editor set out to examine specific substantive offences except insofar as the more important ones—murder, manslaughter, rape and robbery—are incidentally touched upon in the selection of cases presented. The book is therefore, in large measure, directed towards assisting students to explore and grasp the principles underlying only the general part of the criminal law. Moreover, those of us who are used to the style of Brett and Waller will find Friedland's book a lighter work, lacking the historical background material, the copious references to other cases and articles, and the numerous problems for discussion which characterize the Australian casebook. Nevertheless this book manages to cover a very wide field. The chapter headings clearly illustrate this, *viz*: 'The Criminal Act: External Circumstances of the Offence' (ch. 5); 'Attempt and Incitement' (ch. 6); 'The Mental State: Requirements of Culpability' (ch. 8); 'Mistake of Fact' (ch. 9); 'Ignorance of the Law' (ch. 12; 'Drunkenness' (ch. 13); 'Insanity' and 'Automatism' (chs. 14 and 15) and 'Some Aspects of Excusable Conduct' (ch. 16). In addition, there are chapters on *quantum* of proof (ch. 7), strict responsibility (ch. 10), vicarious and corporate liability (ch. 11) and double jeopardy (ch. 18). Two introductory chapters (3 and 4) deal with common law crime and conspiracy, and the topic of morality and the criminal law. One is pleased to observe in passing that the editor's concern for the reality as well as the theory of the criminal law has led him, in chapter 13 on drunkenness, to go beyond the usual excerpts from *D.P.P. v. Beard* and the cases on drunkenness and specific intent, and to include additional important material on the crime of public drunkenness and the problem of the chronically alcoholic offender. Statistically, in terms of their sheer number, socially, in terms of disruption of family life, and criminologically, in terms of the correctional facilities required for them, this class of offender poses for the criminal lawyer some of his most challenging policy decisions. Yet it is a topic of study which is persistently neglected in criminal law courses.

Of greater importance than the material on the general part of the criminal law are the chapters on the trial process and on pre- and post-trial procedures. Almost half of the 568 pages in this book are concerned with these topics while by far the longest chapter deals with sentencing of offenders. The material on pre-arraignment procedures (ch. 2) follows a chapter which introduces the Canadian Criminal Code and the judicial hierarchy. The materials presented on pre-arraignment procedures raise a multitude of issues. For instance, what are, and what should be the limits of lawful search of criminal suspects? How would an Australian court handle the situation posed by *R. v. Brezack*[1] which concerned the problem, not yet common

[1] (1949) 96 C.C.C. 97.

in Australia, of police searching suspected narcotics peddlers who are thought to carry the prohibited drugs in capsules concealed in their mouth or other body orifices? Brezack, believed to be a drug peddler, but in fact not carrying any drugs on his person (though some were later found in his car) was pounced upon, as he walked in the street, by two policemen who seized his arms, caught him by the throat in a choking hold ('to prevent him swallowing anything he might have in his mouth') and threw him to the ground where one of the policemen attempted to insert his finger into Brezack's mouth to recover the drugs incorrectly assumed to be there. Brezack, understandably unhappy with this sudden attack upon the integrity of his body, bit the intruding finger vigorously and repeatedly and found himself later charged with unlawfully assaulting a police officer while in the lawful execution of his duty. He was convicted of this offence in the magistrates court and his appeal to the Ontario Court of Appeal was dismissed, Chief Justice Robertson declaring:

> Constables have a task of great difficulty in their efforts to check the illegal traffic in opium and other prohibited drugs. Those who carry on the traffic are cunning, crafty and unscrupulous almost beyond belief. While, therefore, it is important that constables should be instructed that there are limits upon their right of search, including search of the person, they are not to be encumbered by technicalities in handling the situations with which they often have to deal in narcotic cases . . . .

Again, do we need to legislatively define police powers short of arrest? For too long we have winked at the fact that the police do exercise *de facto* though not *de jure* powers of detention and interrogation not arising out of an arrest. Whatever the theory of the situation, the fact remains that those who accept an invitation to voluntarily attend at a police station to answer questions are not usually free to leave until the police themselves decide to let them go. Should not the legislature recognize the necessity for short term non-custodial interrogation by enacting legislation along the lines proposed in the American Law Institute's *Model Code of Pre-Arraignment Procedure* (*Friedland* 21-22)? In this chapter Friedland also takes up for discussion the use of the summons as compared with arrest as a technique for compelling attendance in court; the need for legal controls on police interrogation of suspects held in custody; detention before trial; the problem of establishing proper criteria for denying bail and the usefulness or otherwise of legal aid schemes for criminal offenders. In relation to the last matter, it is interesting to note that the Ontario Legal Aid Scheme, which came into force early in 1967, allows for law students to assist solicitors and counsel participating in the scheme. The students offer their services through their Legal Aid Society at the university and not only render assistance by interviewing witnesses and researching points of law, but also, in certain circumstances, they may represent an accused person at the trial of a summary offence. While the present writer would express doubts about the wisdom of the latter practice, the participation of students, under supervision, in the former activities seems not only advantageous to the beneficiaries of the scheme itself but also a practical and valuable extension to the curriculum of the law school involved.

The chapter relating to the trial process (ch. 17) is centred around the tragic sex murder in 1959 of 13 year old Lynne Harper by her 14½ year old friend Steven Truscott: *R. v. Truscott*.[2] The case is chosen not only for the dramatic illustration it gives of some of the main steps in a criminal trial, but also because of the great number of problems it raises and since, for many people, it points to serious deficiencies in the Canadian system of criminal justice, especially in relation to juveniles. Friedland sets out substantial extracts from the trial manuscript, including a facsimile of the original indictment, to provide starting points for discussion of subjects such as the propriety of the pre-trial questioning of Truscott by police officers and doctors and the admissibility of evidence so obtained, the question whether the case should have been determined by proceedings in the juvenile courts or whether the 'good of the child' or the 'interest of the community' demanded a public trial before judge and jury in the ordinary criminal courts; the admissibility of certain allegedly inflamatory and prejudicial photographs of the victim of the

2 (1959) 125 C.C.C. 100 (Ontario High Court); [1967] 2 C.C.C. 285 (Supreme Court of Canada).

crime (one such photograph is reproduced opposite p. 404 of the book), and the use of similar fact evidence in the trial.

The final, and by far the longest, chapter in this casebook is devoted to an attempt to enunciate some of the principles on which courts act in fixing sentences. There used to be judges, so it is said, who absolved themselves from all interest in penology or related fields on the ground that sentencing was an art not a science, whatver that was supposed to mean. Nowadays, sentencing is no longer an art but neither is it yet a science. It is an emergent branch of the law whose principles are still ill-defined. Friedland's selection and balancing of cases and materials on sentencing provide an excellent demonstration of the confusion extant in this field of criminal law. A strong warning is given that the language of therapy is sometimes employed to disguise the true state of affairs prevailing in custodial institutions and at other points in the correctional process. For instance, the Canadian version of the notorious 'sexual psychopath laws' is pointed to as a situation in which laws have been supported as therapeutic in nature when in fact such a characterization is of highly doubtful validity. Fortunately this type of legislation has never really gained a foothold in Australia although it has not been without its advocates (*vide* Barry, Paton and Sawer, *Introduction to the Criminal Law in Australia* (1948) 113-15). Even in Canada it has proved to be a failure (*Friedland* 536-52). The legislation allowed for the indeterminate detention of 'criminal sexual psychopaths' but the demonstrated flaw in this form of sanction was that the term 'psychopath', though given legal definition, was of no precise clinical meaning to psychiatrists and psychologists on whom the courts largely relied for expert advice. The law also failed to serve its purpose because of a proper reluctance by the courts to commit a person to indeterminate detention when it was known that the offender so detained would be subject to no different custodial or treatment facilities than provided for prisoners serving determinate sentences. The cases and materials presented by Friedland on this subject constitute, in themselves, an indictment of the whole concept of indeterminate detention for treatment of the so called 'sexual psychopath' or 'dangerous sexual offender'.

There remains one final observation to be made on this book: the work contains a table of cases, but no table of statutes nor a general index. It would be a cardinal sin for any law text of 568 pages to be published without an index; and although the need for a general index in a casebook may not be as compelling as in a text, the lack of an index in this book merits criticism. Not only does it hamper the readers' access to the considerable amount of material other than case law included in the book but also it limits the effective use which can be made of the case law itself. One hopes that when this otherwise commendable book reaches its second edition, as it no doubt will, this defect will be remedied.

RICHARD FOX*

Essays in Legal Philosophy, selected and edited by ROBERT S. SUMMERS, Professor of Law, University of Oregon School of Law. (Basil Blackwell, Oxford, 1968), pp. i-viii, 1-307. United Kingdom Price: 45s sterling.

Legal philosophy, as Professor Summers (the editor of this collection of essays) points out in his introduction, has in one form or another flourished since at least the time of Plato. In the early part of the nineteenth century it was, in the English-speaking world, given a specific form and direction by John Austin which proved unfortunate. Jurisprudence came to be thought of exclusively in the way in which Austin had dealt with it. That way came to appear largely irrelevant from the practising lawyer's viewpoint, with the result that towards the end of the century Professor Dicey was able, quite accurately, to remark that 'jurisprudence stinks in the nostrils of every practising barrister'. Slowly but surely, however, other ways of discussing jurisprudential matters came to the fore, and, as they became generally known, produced both excitement and results. Perhaps Roscoe Pound could claim the major share of the credit for this change in attitude.

Since the end of World War II there has been an uprush of interest in jurispru-

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