BOOK REVIEWS

Defendants in the Criminal Process, by A. E. BOTTOMS AND J. D. MCCLEAN, (Routledge & Kegan Paul, 1976), pp. xviii and 265. £7.50.

Most students of the criminal justice system are familiar with the late Herbert Packer's two models of the criminal process. On the one hand, there was a "crime control model" which stressed repression of crime by use of wide-ranging police and investigatory powers calculated to obtain the speedy conviction of offenders, based on confessions, admissions and guilty pleas. On the other hand, there was the "due process" model which primarily focussed upon the avoidance of potential investigatory and procedural errors by use of formal safeguards in the form of adversary processes which, though time consuming, were designed to restrain abuse of power and ensure that fairness prevailed over efficiency. We are now offered, as a third, more pragmatic, model of the criminal justice system, the "liberal bureaucratic model" of Bottoms and McClean.

The legal system is a trap for the unwary; its complexity and jargon confuses those enmeshed in it, yet critical decisions such as those relating to confessions, representation, choice of court and plea (all of which shape subsequent proceedings), are often made in haste, under stress, and in ignorance of their implications. Recognizing this, Bottoms and McClean undertook a project of research which concentrated on certain key decisions made by criminal defendants, and examined their understanding of the significance of their choices.

The research was based on a sample of 1696 cases originating in the Sheffield Magistrates' Court between 1st November 1971 and 30th April 1972. The cases studied were all indictable prosecutions (other than motoring cases) in which the defendant had a choice of venue between the Magistrates' Court and a higher court. In addition, a further 293 male defendants were subject to follow-up interviews. The reasons for the fall-off in size between the court and interview samples, and the nature of the methodological problems which shaped the research as it evolved from conception through planning and piloting stages to execution, are explained in detail in the opening chapter, and this explanatory material is most valuable reading for any legal researcher interested in undertaking similar empirical investigations into court functioning. The strategic problems which Bottoms and McClean had to surmount pointedly illustrate that such research cannot be pursued quickly, nor entered naively.

The project centred around five key areas of venue, plea, representation, bail and appeal, since these were seen as major decision-points faced by defendants. Packer had asserted that people who committed crimes ordinarily denied their guilt, tried not to co-operate with the police, and, if brought to trial, did whatever their resources permitted to resist being convicted: "It is a struggle from start to finish". Bottoms and McClean deny that this description is accurate—at least in the Magistrates' Courts they observed. Two-thirds of those appearing before the courts did not struggle, and ignorance and passivity characterized their responses. Almost 85% of defendants, when offered a choice between summary hearing or a trial before a jury chose the former. Though this figure might be interpreted as reflecting a rational and strategic choice, follow-up questionnaires revealed that 27% of defendants consenting to summary trial were unaware, as they entered the court, that they had a choice of venue, and the proportion was 31% for those pleading not guilty. For this latter group, advance knowledge of the option of trial by jury might well have been an important matter. Moreover, although represented defendants were better

informed than unrepresented ones, there was a surprising number of represented cases where the solicitor had not told the defendant about the decisions he faced, and thus left him unprepared for them.

It is not surprising to find that the majority of cases were disposed of by guilty pleas. An earlier English study by Zander had shown that 80% of defendants in London Magistrates' Courts pleaded guilty (86% of those who were unrepresented and 55% who were), and the Sheffield study confirmed this data with an even higher overall figure of 93%. Why did they plead guilty in such numbers? The predominant reasons given were that in fact they were guilty, or that the police case was so strong as to make it not worth disputing. Nevertheless, following post-trial interviews with the defendants, the researchers came to the conclusion that 18% of the guilty plea defendants had at least one charge which came into the category of "possibly innocent", and that about one-third of those in this category had been induced to plead guilty by their counsel. It was clear that English lawyers were as willing as those in America to advise their clients to plead guilty in a doubtful case, rather than contest it on weak foundations and risk a heavier sentence.

The book contains similar analyses of representation in the Magistrates' Court (59% were wholly unrepresented), and of the means by which representation was obtained, its timing, and the degree of satisfaction clients expressed with their advocate's performance. So too with the chapters on the decision to seek bail or to appeal following conviction. The researchers found, for instance, that more often than not the defendants made important decisions without discussing the matter with anyone else: 81% of unrepresented defendants had not discussed the possibility of obtaining legal aid with anyone, and 86% of convicted defendants had not talked with anyone about the possibility of an appeal.

Though Bottoms and McClean expected that the English criminal justice system would accord with Packer's due process model and thus allow the defendant to exploit to the full his rights to legal representation, disclosure of the prosecution's case at committal proceedings, trial by jury and the full panoply of the adversary process, they discovered that they were wrong. The system as revealed in their study operated on a "liberal bureaucratic" basis. That is to say, while it drew from the due process model the value of individual liberty and the need for justice to be both done and seen to be done, it contained built-in sanctions aimed at deterring those who too frivolously sought to rely on their due process rights and thus interfered with the administrative efficiency of the courts in processing offenders. Since the courts would collapse administratively if too many defendants insisted on jury trial, subtle pressures are exerted upon defendants to choose summary trial (e.g. fear of delay, fear of increased penalty, and often linked to these, legal advice to take the line of least resistance). Access to legal representation was *de facto* restricted until after confessions had been obtained from the accused or his companions, and these usually left the defendant little alternative but to enter a guilty plea. Similarly, rules relating to loss of time for "frivolous" appeals operated as a deterrent to defendants considering challenging the finding or sentence. The defendant, under this third model, had all his formal due process rights, but administrative convenience dictated that he be deterred, as far as possible, from utilizing them: the quantitative output of the system was not to be unduly restrained by the pursuit of quality control. Even lawyers were subservient to this system and, while ostensibly acting in their client's best interests, took action or gave advice which, on its face, was more concerned with the rapid disposition of the case and the smooth flow of proceedings, than with the objective maintenance of their client's strict legal rights. This is what Blumberg, in writing on the practice of law as a confidence game, described as the "organisational co-optation of the profession". Though not cited in Bottoms and McClean's book, Blumberg's words are particularly apposite

> "Criminal law practice is a unique form of private law practice since it really only appears to be private practice. Actually it is bureaucratic practice, because of the legal practitioner's enmeshment in the authority, discipline, and perspectives of the court organisation . . . in the sense that the lawyer in the criminal court serves as a double agent, serving higher organisational rather than professional ends, he

may be deemed to be engaged in bureaucratic rather than private practice . . . the lawyer-client 'confidence game', in addition to its other functions, serves to conceal this fact": (1966) 1 *Law and Society Review*, 15, 31.

This book documents how little of what is happening, to them defendants in the criminal process comprehend, and calls for more positive steps to be taken to inform them of their rights. The recently established Victorian committee examining the clarification and simplification of state legislative language should take note of these research findings and consider whether the documents with which criminal proceedings are initiated might not only, on their face, be rendered more comprehensible to defendants, but also be designed to include appended explanations of defendants' rights and court procedure, particularly as they relate to those critical areas in which the defendant will be called upon to make some form of election.

RICHARD G. FOX

Letter to the President on Crime Control, by N. MORRIS AND G. HAWKINS, (University of Chicago Press, 1977), pp. vii and 96. US$1.95.

This opportunistically titled pamphlet was written at the time of the last United States presidential campaign, and addressed as a letter to the unknown future president with the modest promise that, if its prescriptions for dealing with the crime problem were diligently followed, the incoming president would earn "both the approval of present generations and a place in history secure beyond cavil or qualification".

Basically, the programme of recommended federal action requires initiatives in the following areas:

1. A concentration of effort on the control of violent and predatory crimes and the development of alternative means, such as diversion and mediation for handling other forms of crime which currently overburden police and courts.
2. Improved gun control schemes and a systematic programme of civilian disarmament, particularly of their possession of hand guns.
3. Abandonment of the current monolithic approach to drug abuse and narcotic addiction, with its emphasis on supply reduction and, instead, concentration on demand reduction by methadone and heroin maintenance programmes for users of the more addictive drugs, and decriminalization of the use of non-addictive ones such as marijuana.
4. Divestment by the police of many of their non-crime-related administrative community service and traffic control functions in favour of more specialized agencies, with a consequential concentration on the deployment of limited police resources in combating violence and predatory crimes.
5. Open judicial supervision and control of the plea-bargaining process, and the development of a more principled common law of sentencing through legislative guidelines such as those proposed by the American Law Institute's *Model Penal Code.*
6. The expansion of rehabilitative *opportunities* in prison, but the abandonment of futile attempts at coercively "curing" criminals.
7. The introduction of federal and state schemes for the financial compensation of victims of crimes of violence.

Though the authors conceded that the magisterial exercise of presidential power could not exorcise all evils in the criminal justice system, they considered that the influence of federal action could be considerable, not only by ensuring that its own programmes, operations and procedure were exemplary, but also by funding innovative, measurable and replicable efforts at crime control at state and local levels, and by providing national research and statistical services for monitoring the dimensions of crime and the impact of specific crime response programmes.

These proposals are essentially a restatement of the recommendations contained in the authors' earlier and more detailed work, *The Honest Politician's Guide to Crime Control,* which appeared when President Nixon was promising to restrain lawlessness and maintain order. He did neither. Whether Jimmy Carter will heed, or be capable of implementing, the proposals in this *Letter to the President* remains to be seen.

RICHARD G. FOX

A Guide to Company Law, by ZVOMIMIR HRIBAR, (Law Book Co., Sydney, 1978).

In the words of its author, this book is an attempt to meet the need of students for "some guide with which they can construct a general framework of company law". It is not intended as a text book or to give a complete outline of the law in this area.

The book is divided into fourteen chapters. Chapter one gives a broad overview of the structure of the Uniform *Companies Act* in what is no more than a table of contents of the Act; then follow thirteen chapters dealing with various topics related to company law. Clearly, in this short work the author has been selective in the topics covered. The criteria of selection are stated to be either those provisions of the Act important from the viewpoint of "general knowledge of a company", or areas that have often proven difficult to students.

Thus, chapters deal with such areas as classifications of companies, company finance, share capital, management of companies, company meetings, protection of creditors and outside investors, dissolutions and dividends. The areas chosen are very broad and the treatment given very general. Each chapter is intended to provide a set of educational resources; an introductory comment followed by diagrams and summaries of aspects of law in that area. All material is concise, perhaps too much so for most situations, but it does provide an overview.

The book can be quite valuable, provided its limitations are kept in mind. A teacher who would like to present a structural overview of a certain topic might find reference to one of the diagrams or summaries very useful. There are also a number of checklists, such as lists of documents to be lodged before and after incorporation for the appropriate type of company.

This book does not pretend to be any more than a guide. Used as such it could be of special value to teachers and students to provide an overview or give a perspective. But it does no more.

T. PAGONE

Civil Procedure, by GERARD NASH, (Law Book Company Ltd., 1976), pp. xxi and 458.

The relatively recent elevation of the subject of civil procedure to the forefront of Australian law schools curricula was evidenced in a previous edition of this Review, (1977) 4 *Monash Law Review* 166, where this book, together with two others on the same subject, was reviewed by a teacher of civil procedure. However, the techniques employed by the author in seeking to accommodate the teaching needs arising from such enhanced status may be criticized from a student's perspective upon two broad grounds—the method of instruction employed and the narrow definition accorded to the ambit of procedure with respect to civil dispute resolution.

In nine chapters, the student is taken through the basics of civil procedure: court structure, service, pleadings, parties, discovery, interrogatories, disposition without trial, the hearing, costs and enforcement. The general approach is to provide a general statement, followed by an extract from a judgment, and a list of questions.

Inasmuch as the book purports to be "geared to the needs of the Australian student" by providing the teacher with "a focal point around which he can build his lectures", it is perhaps legitimate that the work directs learning initiatives away from the traditional textbook format towards a scheme in which the discovery of information rests extensively with the student, albeit assisted by his or her lecturer. As such, the threefold questioning technique employed by the author, if assimilated by the student in his or her study, may well go far in providing a basic framework of the major rules of court. However, what is to be regretted, and what may distract even the assiduous student from the attainment of such goals, is that the use of questions is so frequent that continuity of learning is interrupted and distracted by research into questions which are not truly germane to the principles upon which they rest.

This virtually requires the student to have library resources constantly at hand, as the answers are not usually to be found in the extracts given.

As a consequence of such techniques, a fragmentary collage of partially formed issues and facts may eclipse a student's perception of unifying principles, and even the rules of court themselves. Moreover, upon purely practical grounds, the book's stated target audience would be unlikely—if not unwilling—to devote the amount of time required in order to obtain the total picture to which the text merely alludes. In the absence of a recognition by the author of the practical constraints of time which are inherent in the final years of an undergraduate degree, the seemingly indiscriminate utilization of a questioning technique can only derogate from the value of any text on this neglected area of law.

A second, and more substantive, criticism of the book derives from its relatively narrow ambit when viewed within the contemporary socio-legal climate. Inasmuch as the text concentrates almost exclusively upon the rules of court as they govern the *process* of civil litigation in *traditional forums,* it appears to disregarded both the variables which often dictate the internal dynamics of such bodies themselves, and the rapid emergence of alternate diversionary models of dispute resolution primarily in response to the relative failure of existing procedural forms. To elevate the rules of court to the virtual exclusion of alternate procedural norms adopted in this and other jurisdictions is to obscure the comparative demise of the former in the attainment of the perceived objectives of an adversary system in the late twentieth century. With respect to the traditional scheme itself, though the author alludes to the cost-benefit decision which must be made with respect to the initiation of proceedings, the reader's attention is rarely directed beyond the narrow parameters of judicial dispute resolution. Similarly, though Chapter 8 is devoted to the very salient consideration of the costs of litigation, the interaction of such factors with the emerging schemes of legal aid is neither dealt with in the text, nor is made the subject of a reference direction for further research. In short, the area is sorely neglected in favour of more traditional analysis founded upon the spurious assumption of real quality between the parties to the dispute.

There are also some minor deficiencies in sections of the book. For example, the author (at pages 13 and 14) cites the judgment of Jacob P. in *Ex parte Sadler; re Cemac Modular Constructions Pty. Ltd.* [1973] 1 N.S.W.L.R. 263, and suggests that the Court granted the application for removal from the District Court to the Supreme Court. Unfortunately, Jacobs P. was dissenting—the Court refused the application.

The book deviates from the traditional textbook in a number of ways. It lacks the critical analysis which the student would expect to find in a textbook written in the 1970s. It falls somewhere between a casebook and a commentary, and unfortunately suffers from the deficiencies of both. The book is more of an expanded study guide, than a traditional textbook.

In conclusion, though it is clear that the existence of any work upon the much neglected area of civil procedure represents a welcome addition, it is perhaps regrettable that the book's modest aims and its deficiencies within the ambit of such aims preclude the attainment of the potential inherent in that subject.

LUCY HUNTER

B. M. YOUNG

Section 260 of the Income Tax Assessment Act, I. C. F. SPRY, (Law Book Co. Ltd., 1978), 110 pages (plus 38 pages of appendix, index etc.). $15.50 (limp).

Readers familiar with the work of Dr Spry will be aware that he brings insights from a period at the Monash Law Faculty and much practical experience to this book. This second edition of the monograph contains considerable changes from the earlier edition, and has appeared with commendable speed following recent critical developments affecting section 260, the general anti-avoidance provision in the *Income Tax Assessment Act* 1936. Perhaps the rapid publication of the book is responsible for some passages which the author would advance with less enthusiasm if there were more time for reflection. Nevertheless, this book does contain some uncharacteristic statements. For example, take a prominent reference in the back cover blurb. Possibly it simply slipped past the author. It refers to the reasoning of the unanimous decision in the leading Privy Council authority in *Newton* v. *F.C.T.* (1957) 97 C.L.R. 577. The blurb says that *Newton* "can no longer be regarded as authoritative". It is true that the recent decisions of the High Court have considerably expanded the scope of the choice principle exception to *Newton*, and that the rule against reconstruction has recently sired a novel antecedent transaction doctrine, but the courts have carefully avoided any attack on the long-standing and widely accepted predication test laid down in *Newton*. But where the High Court fears to tread, and many would argue that they have pushed their interpretation of section 260 to its limits, Dr Spry (or his publisher) springs on its behalf.

Hardly less disturbing is the assertion in the preface that the ordinary family dealing test "laid down by Lord Denning is not easy to justify on the construction of the Act as a whole, and it must now be regarded as no longer authoritative". Or (at p. 32) that it "evidenced a misconception of the earlier decisions". That is not an assertion which Dixon C.J. or a generation of High Court judges were prepared to make when applying the predication test. If commentators are willing to abandon such long-standing and well-accepted authority on the basis of personal dissatisfaction with its consequences or changing political realities, we run the risk of creating the impression that the rule of law consists of nothing more solemn than the High Court making decisions based on personal political evaluations or, worse, that the High Court can choose whether or not to give effect to the legislation of a sovereign parliament. While such propositions may have currency amongst certain circles which do not give full weight to the protections and continuity afforded by our common law traditions, they are hardly propositions which can be seriously advanced by an author committed to a framework of Dixonian legalism. Indeed, there are some who would suggest, and I hasten to add that this reviewer would not be one of them, that stances like this one can be characterized "legal radicalism".

The arrangement of the book is clear and helpful. It condenses a difficult subject into manageable categories, and its horizontal treatment of various avoidance schemes helps to clarify the operation of the provision. The earlier passages on the origins of section 260 give helpful historical context to the provision. Occasional sentences are circumlocutory, and some propositions leave the reader dangling in the air. For an example, take the prominent statement (at p. 53; or see 2nd and 3rd paras.; last par. p. 32):

> "Ordinarily the term 'dividend stripping operation' is used loosely to refer to a transaction in the course of which accumulated profits of a company are distributed by way of dividends to persons who have acquired shares in the company for that purpose."

"Dividend stripping", though it comprehends many variants, is used no more loosely among practitioners than any other complex concept. Complex concepts almost invariably contain ambiguity in their connotation. To say that it covers a transaction in the course of which accumulated profits are distributed, hardly explains the essence of the scheme. The essence of dividend stripping, of course, is to use a share trading company to strip out the accumulated profits from a company in order

to create an artificial tax loss on the resale of the hollow company shell. One can appreciate the desire of the author to keep his analysis as apolitical as possible, but by dissembling in this way the author allows his insistence on political euphemisms to inhibit communication.

There are major arguments of substance advanced with which I have reservations, but this is not the place to enter into a detailed debate about the width of the so-called rule against reconstruction or the confusion surrounding the antecedent transaction doctrine in the light of recent authorities. Reasonable men will disagree in their interpretation of the difficult decisions developing these doctrines. My views on these matters are covered extensively in a forthcoming book, Grbich, Munn and Reicher *Modern Trusts and Taxation* (Monash University Faculty of Law, 1978), chapter 6, and two earlier articles analysed in that chapter. But one or two short points can be made. The discussion by Dr Spry of the critical question about the demarcation between the choice principle and the predication test (at pp. 31-8) is rather mechanistic, relying heavily on an *expressio unius* construction, and dealing altogether too lightly with the policy pursued in the leading decision in *Newton* and a string of cases following it. It can hardly be a satisfactory answer to a legislature developing a general anti-avoidance provision, or a bill of rights, that the general objectives pursued must give way in all cases to particular rules. Such an analysis, when it attacks a leading decision, ought to pay the decision the respect of analysing the reasons behind it, and the utility of the policy it pursues rather than relying on principles of statutory interpretation honoured as much in the breach as the observance. The crucial part of the book dealing with the interpretation of the annihilation portion of s. 260 after 1958 (pp. 31-47) tends to break the provision up into its component segments and, while this in itself is not necessarily a fault, it never really synthesises the provision, or systematically develops a theory to explain its operation in a coherent way to give the provision a fair area of operation in the context of the Act. Such a theory is necessary to replace the predication theory from *Newton* which the author attacks so vigorously.

Criticisms can also be made about the citation of other authorities. We find (at p. 66) that the Privy Council in *Mangin* v. *C.I.R.* [1971] 2 W.L.R. 39 is dismissed because New Zealand authorities had "taken a different" line, that *Hollyock* v. *F.C.T.* (1971) 125 C.L.R. 647 and *Arbuckle* v. *F.C.T.* (1964) 13 A.T.D. 378 are not simply diverging authorities but "anomalous decisions by single judges". In contrast, when it is established that the New Zealand section is similar to ours, *Europa Oil (N.Z) Ltd.* v. *I.R.C.* [1976] 1 W.L.R. 464 is "a fortiori" applicable to Australia (at p. 79). Of course, the process of writing a monograph necessarily implies the mobilization of bias, because that is irretrievably the nature of all theory building. But the author of a formal monograph should be careful not to give the impression that all judicial authority contrary to his view is unsound, and that all commentators with views which diverge from his have no place in the text. If he does so, he runs the danger of leaving his readers with the impression, however unfair, that they are being fed selective and inadequate information. It is a little puzzling to find that copies of the fully reported decisions in *Mullens* and *Slutzkin* were felt justified if there was a shortage of room for fully discussing and distinguishing divergent views.

It is legitimate for an author to draw his main source of the law from recent decided authorities, and to attempt to build a theory which excludes the experience of an earlier line of authority. If he limits his analysis in this way, it may be the basis of comment on the ground that it lacks historical depth or is not sufficiently critical or, of course, because his theory is not the best view, but it is hardly cause for any serious criticism. But when the author goes on to extrapolate from this analysis into an advocacy of positions on the reform of that provision and into an attack of the leading authorities which interpret it, it is incumbent on him to fairly set out, and to examine, the competing policy choices on which this analysis is based. Take an example from the book. On reconstruction (at p. 104), Spry argues that an express power of reconstruction, "attractive as it might at first sight appear, would not by any means eliminate uncertainties and difficulties". While this assertion is not challenged, it hardly presents a balanced picture. Against this, the author neglects to

spell out an inference which is hardly controversial and all too easy to draw from his analysis of the cases. Without an effective reconstruction provision, it is child's play to frustrate the objectives of section 260 and, in turn, to circumvent the charges to tax imposed by the Act. Recent promises of the Treasurer to institute progressive loophole-closing can never be a substitute for an effective general anti-avoidance provision, simply because the government can block loopholes only after tax avoiders have already escaped through a particular loophole. Further, experience suggests that the game of "dodge tax and close-a-loophole" hardly leads to certainty in the law, as the long and tortured experience in United Kingdom with section 2(1)(b) of the *Finance Act* 1894 demonstrates. After years of unsuccessful loophole closing, this death duty provision was finally scrapped. A less extensive record is already building up with attempts to close the dividend strip which preceded *Newton* in 1958. Variants of this scheme are still being attacked in 1978. These are only two examples from a great many.

Much more important, a debate about certainty can hardly be conducted in isolation from recent public concern about wide-scale and, more significant, highly visible public displays of artificial tax avoidance. Recent speculation in the press has estimated that the amount of income tax lost in Australia from avoidance runs as high as $500-2,000 million dollars for the 1977-1978 tax year. However much lawyers may deplore public meddling in their preserve, and however much they may long to isolate their exercise in esoteric technocratic gamemanship from the politican arena, recent events have ensured that this is no longer possible. The public are beginning to perceive how critically High Court decisions in cases like *Curran* v. *F.C.T.* (1974) 74 A.T.C. 4296, *Slutzkin* v. *F.C.T.* (1977) 7 A.T.R. 166 and *Cridland* v. *F.C.T.* (1977) 77 A.T.C. 4538 hit their own pockets. Those same decisions have a significant impact on economic and distributional policies. The Treasurer, Mr Howard, used some outspoken language to attack them in his Second Reading speech on the *Income Tax Amendment Bill* 1978 (Hansard, House of Representatives, 7th April 1978, 1244)

> "As a government, we simply cannot accept a situation in which the actions of a few can jeopardize the well-being of all. Not only do these practices make the government's basic task of economic management more difficult, but they can seriously jeopardize our programme of tax reform designed to reduce the overall burden of taxation. Furthermore, it is particularly unfair when, in many cases, persons involved in these schemes are the ones best able financially to accept their tax liabilities."

That "technical" tax issues will no longer be allowed to live in splendid isolation from the political arena is not just a fact of life but an important premise which tax lawyers, including the judiciary, will have to assimilate in the next few years if their credibility as a dispute settlement mechanism is not to be seriously eroded. In recent weeks, there has been some alarming and widely disseminated criticism of the High Court for its decision in *Curran* v. *F.C.T.* (1974) 74 A.T.C. 4296. For example, there is a reported interview with Mr Howard in the *Australian Financial Review* of 21st April 1978 in which, if correctly reported, he said

> "If the High Court takes the side of tax avoidance, the law will be promptly changed. He said tax loopholes were often created by court interpretations that were clearly in conflict with what parliament intended."

And on 17th April 1978, the *Australian Financial Review* itself wrote of the "spectacular interpretation of the English language which allowed the High Court to transform profit into loss" in the current decisions. The law, which depends so very heavily for its legitimacy and for its power on public respect, cannot sustain these sorts of criticisms indefinitely.

Lawyers can respond to such criticism by more pointedly balancing traditional insistence on certainty or administrative imperatives against the impact of tax avoidance on other policy objectives. The question, as Henry Simmons would put it, is not *whether* the interpretation of section 260 will affect the distribution of income tax burden. It already does that. It is therefore only sensible to examine the impact

which avoidance does have and which it ought to have on the distribution of the tax burden. The danger is not so much that the courts or particular commentators will make those political judgments based on their own values, but that those judgments will remain unarticulated and implicit in a particular analysis, and that that analysis will present political ideology as if it were positive legal analysis. While this may sometimes be a peculiarly effective way of achieving political ends, it may inhibit effective response to changing political realities and hence threaten the health and stability and growth of the legal system when existing unarticulated ideas no longer accord with current political reality. As Keynes said in his classic analysis, ideas are more powerful than is commonly understood. Indeed, the world is ruled by little else. Practical men who consider themselves quite exempt from any philosophical influences are usually the slaves of some defunct economist.

In summary, the book gives a helpful and well-digested summary of this difficult area of law. As an assessment of the success of the provision and of directions for reform, it would have been a better book if more balance was given to competing objectives. The book is a useful contribution to the subject, provided some of its generalizations are treated with caution, and it is read with contributions which give a divergent view to the important issues raised by section 260.

Y. F. R. GRBICH

Business Law of Australia, by R. B. VERMEESCH AND K. E. LINDGREN, (3rd edition, Butterworths, 1978), pp. xxxii and 832.

This is a good book. It fills a read need, that need being to provide an overview (without being unnecessarily simplistic) of a very extensive range of Australian commercial law. A few years ago this task was fulfilled poorly in my opinion, by various texts on "Mercantile Law" which adopted a somewhat pedantic rule-citing approach. In contrast, this text gives the reader more depth by way of case summaries and discussion to show that the answer may not always be quite so simple. Unless one turns to the texts on the individual topics covered, there is no choice but Vermeesch and Lindgren!

On some areas, the text is more than adequate. For example, manufacturers' liability in para. [1924] even refers to the 1976 *Swanson Committee* recommendations (and, very helpfully, the *Swanson* paragraph numbers are given). However, in the next edition, the South Australian and A.C.T. legislation on manufacturers' liability could be considered in fuller detail. Perhaps also, in the next edition, further case law could be examined (such as *Baxter* v. *Ford Motor Co.* 12 P. (2d) 409 (1932) and the other U.S. cases; or the damages for economic loss cases such as *S.C.M. (U.K.) Ltd.* v. *W.J. Whittall & Sons Ltd.* [1971] 1 Q.B. 337, *Spartan Steel & Alloys Ltd.* v. *Martin & Co. (Contractors) Ltd.* [1973] 1 Q.B. 27 and *Caltex Oil (Australia) Pty. Ltd* v. *The Dredge "Willemstad"* (1977) 51 A.L.J.R. 270). The glimpse of this developing area in para. [1924] begs fuller elucidation, and on this important subject a commercial law reader has the right to know!

Important new legal developments, such as the law relating to unconscionable contracts (para. [716]), are now covered (and covered quite adequately) in this third edition. Some of the weaker areas of the earlier edition have now been expanded and smoothed out, such as para. [2347] on the banker's duty of honouring cheques drawn by his customer. But more than this: the text has also been substantially updated. Do you want a quick run-down on consumer protection legislation—federal and state? Try paras. [2184]-[2185]. Material on exclusion clauses [1926] is also expanded in view of all the recent developments.

Not everything is here, however. Key problem areas of modern commercial law, such as the position of standard form contracts or contributory negligence of the collecting bank (*Lumsden* v. *London Trustee Savings Bank* [1971] 1 Lloyd's Rep. 114 and *Wilton* v. *Commonwealth Trading Bank* [1973] 2 N.S.W.L.R. 644) do not find

their way into the text. Nor are more than a few words on Industrial Law and the Contract of Employment (both of which I know are covered in courses where this book is prescribed as a text) included in the text. And why do bank cheques not get a mention in view of the recent cases on their status? Is a bank cheque in fact any longer the equivalent of cash? In particular, the accounting and business students using this text will want to know the answer to that. Or what of s. 18 of the *Life Fire and Marine Insurance Act* 1902 (N.S.W.) or s. 27 of the *Instruments Act* 1958 (Vic.) and their application to the insurance principles discussed at [2504]-[2505]? And why is consumer protection squeezed into two paragraphs at the end of the Credit and Securities chapter? In view of the size of the growing corpus of case law and statutory material, could not the scattered references in the text (to manufacturers' liability, the *Trade Practices Act* and the like) be brought together under one heading?

I can hear the publisher saying, "but there is no room". I have always felt, as a former teacher of commercial law to non-law students, that there is a certain waste and duplication in the book, robbing it of valuable page space. Look at the tort cases—*Donoghue* v. *Stevenson, Hedley Byrne & Co.* v. *Heller & Partners Ltd.* and the rest—which are in effect duplicated in paras. [310]-[311] and [1112]-[1113] and the surrounding paragraphs. This, I feel, is not the place where an introduction to law, precedent, etc. (as given in paras. [310]-[311]) is required. The book would be better if kept to its aim of being a compendium of business law. In other words, in a tight compass, space is wasted. Have the publisher or authors endeavoured to ascertain whether any brave soul, let alone any lecture group, has ever read Chapter 1, or for those even braver, Chapter 28? What does Aristotle have to do with Australian business law?

The new edition is an improvement upon its predecessor. I am sure that if the publishers offered a reward for second editions without broken spines, loose pages, and thick "furry" paper, they would pay out nothing! The new edition, sturdily stitched, and with pages having a fresh-checked glow, will give the non-law student (who will make up a large part of the market for this book), and the seasoned practitioner, a favourable view of the other products the same publisher has to offer. Incidentally, other improvements include the numbering of paragraphs at the corner of every page, a neat appendix on Case Reports and References and generally a tighter and more compact appearance. Regrettably, a few errors from the earlier edition have not been corrected: *it's* for *its* in [2338]; *s. 8* for *s. 80* in [2337]. The fact that the *Manufacturers Warranties Ordinance* 1975 (A.C.T.) [1924] was repealed and re-enacted in 1977 is not mentioned.

I have picked out some technical matters, but I return to my opening comments: for its purpose, this book cannot be beaten. It is well set out; it will refresh the practitioner's memory on matters he may not have considered for years; it can provide many quick answers to basic questions; it provides many good references for the reader to track down if he wants to know more; yet it can also be used with success by the student market. The third edition deserves the success it will no doubt have. What is needed now is a good workbook to be used alongside Vermeesch and Lindgren.

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