

Book Reviews

Juvenile Justice: Debating the Issues by FAY GALE, NGAIRE NAFFINE and JOY WUNDERSITZ (editors) (St Leonard's, Allen & Unwin, 1993) pp xx, 185

This is an edited collection of sixteen essays on juvenile justice in Australia. They are organised under five main headings dealing respectively with statistics, philosophy, policing, diversion, and courts. The papers emerged from a workshop sponsored by the Academy of Social Sciences in Australia.

Juvenile justice is an isolated system. It is open to tampering by policy makers in line with the philosophical fashions of the day and changes are usually without reference either to the adult sentencing system, which is its extension, or to broader issues of youth policy. The latter include employment, education, income support and health. It is as important for those framing policy in these areas to understand the place of criminal justice in the community's global response to the needs of young people as it is for those working in criminal justice to recognise the real limits on what the justice system can achieve. Youthfulness may be no more than an ameliorating factor at sentencing, but hopes for rehabilitative benefits have been extended into the substantive field so as to produce response models based on an extended welfare jurisdiction derived from concepts of wardship. 'Due process' then gives way to the 'best interests' of the child. This idea had great currency until the unfulfilled promises of rehabilitation allowed revival of more conservative and retributivist penal policies such as those recently evidenced by juvenile justice legislation in Western Australia.

This compact and intense book starts by acknowledging the enormous ambivalence in the adult population as to how young offenders should be 'dealt with'. The opening statistical data tries to set the scene with background material on varying Australian patterns of official intervention (Western Australia has by far the highest intervention rate of the six states); the shift towards diversionary mechanisms; and the continued predominance of males in juvenile crime. The over-representation of Aborigines in juvenile justice also mimics that in the adult scene. Despite what appears to be prevailing community anxiety about serious juvenile crime, the figures show that most youngsters before the courts are not heavily involved in serious offending and that they tend to be drawn from the disadvantaged or marginalised sections of the community. It is for this group that the broader aspects of youth policy are so important.

The flavour of the book and its mix of ideas and authors is indicated by some of its opening papers. The apparently incompatible approaches of welfare and justice are explored by John Pratt of the Institute of Criminology, Victoria University of Wellington, New Zealand. Then follows John Seymour of the Australian National University, probably Australia's leading researcher on juvenile justice systems, highlighting the distinctive history and

characteristics of the Australian juvenile justice system. Kathy Laster of LaTrobe Legal Studies contributes an incisive chapter on the construction of social attitudes towards the young and explores the ways in which pragmatism has always tempered juvenile justice ideology in this country.

The issues of violence and abuse in police interactions with youngsters is taken up by Christine Alder of the Melbourne Department of Criminology, and by Linda Hancock of the School of Social Sciences at Deakin University. This is followed by papers by Ken Polk, also of Melbourne Criminology and Michael Barry, former manager of Young Offender programs in the Department of Family and Community Services in South Australia, on alternative informal processing of offenders. The book concludes with papers on the juvenile court systems by Rod Blackmore, Senior Magistrate of the Children's Court in New South Wales and Michael Hogan, Director of the Public Interest Advocacy Centre in Sydney.

The text, which is supported by an extensive bibliography and a helpfully detailed index, canvasses all major issues regarding communal reactions to crime in the young. It lists many problems, offers few answers, and provokes much gloom. It suggests that many of the changes which have occurred in juvenile justice over recent years have been ineffectual and may have worsened the plight of some of those they were intended to help. Yet the editors offer the pious hope that government is beginning to learn from its past ineptness. But it it? Juvenile justice policy has always been long on rhetoric and short on reality. This is no better illustrated than by former Prime Minister Hawke's infamous 1987 election promise that 'by the year 1990, no Australian child will live in poverty'.

Four years down the track the solution for youth poverty is as distant as that for delinquency.

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Understanding Company Law by PHILLIP LIPTON and ABE HERZBERG
(5th ed, Sydney, Law Book Company, 1993) pp liii, 735

'Never judge a book by its cover' is an old adage, but if it is true in many cases, it is not true in this one. There are intriguing images on the cover of this book: a telephone, a computer keyboard and screen, a judge's gavel, a large gold dollar sign and a gold common seal (complete with picture of a furry animal with flippers). This signals that the textbook provides a sound introduction to both the legal and practical aspects of company law in an accessible way for students in the 1990s. The book also comes with a computer disk containing a set of tutorials.

This is the fifth edition of *Understanding Company Law*; a new edition has appeared roughly every two years since the first edition in 1984. The authors' diligence is probably due to the speed of legislative change, which in this area

has been rapid. This edition contains substantial new material as a consequence of the passage of the *Corporate Law Reform Act 1992* (Cth). The first chapter sets out the background to the national companies legislation and details the Corporations Law scheme and the Alice Springs Agreement. There is a new chapter on 'Voluntary Administration' and the last chapter on 'Liquidations' has been substantially rewritten to take account of other insolvency reforms. New material has been introduced on corporate governance in chapter 13, including an explanation of the new regime for regulating financial benefits to public company directors and changes to directors' duties arising out of both statutory reform and case law. Entity-based reporting is dealt with in chapter 15 and insider trading provisions are discussed in chapter 19. This new material is written in the characteristically clear and accessible style of the rest of the text. Of course, since the book went to press (it is current to May 1993), there have been further legislative changes. Generally, these have been foreshadowed in the preface. The text also includes discussion of reform proposals which have been enacted subsequently in the *Corporate Law Reform Act 1994* (Cth), such as enhanced disclosure, periodic reporting, changes to the prospectus provisions and provisions relating to insurance and indemnification of officers and auditors. There are further reform proposals contained in the Corporations Legislation Amendment Bill 1994 and the Corporate Law Reform Bill 1994 which are not referred to in the text. However, supplemented by lectures or further research through the loose-leaf publications, the book provides a comprehensive picture of the current position.

The authors have designed their work for students taking accountancy and commercial courses and this perspective is pursued in the current edition. References to the legislative scheme are supplemented by new sections on the Australian Accounting Standards Board and the Companies Auditors and Liquidators Disciplinary Board. The text also deals with CHES (Clearing House Subregister System) and contains sections on the securities industry and the futures industry. The bibliographies which conclude each chapter contain, in addition to relevant articles, references to some ASC Practice Notes and Policy Statements.

The production of subsequent editions of a successful textbook can be either a burden or an opportunity. In many cases, authors give in to the temptation to add but never to subtract and to leave untouched parts of the text unaffected by profound changes in the law. In this case, however, the authors have made subtle improvements which enhance the readability of the work and its usefulness as a teaching tool. For example, cross references now include page numbers. A heading has been changed where the old was not as useful a signpost as it could have been and passages of text have been moved to more appropriate places. The bibliographies which conclude each chapter have been revised and updated. Small typographical errors have been corrected. If there is any criticism to be made, it is that the text has expanded by 100 pages to a hefty 700. This is to be expected with the need to add substantial new material, including relevant new cases. However, through its editions, the text has become steadily more comprehensive. This work

functions extremely well as a student text and it would be regrettable if that focus was lost. Hopefully, the authors will consider some radical pruning in the next edition so as to keep the text to a manageable size. For example, it is arguable that a select bibliography of 57 entries has ceased to be a useful guide for students. On some occasions, a new case has been included without adequate explanation of its significance.

A useful innovation in this edition is the provision of computer tutorials prepared by the School of Accounting Legal Studies, Queensland University of Technology. Each tutorial contains between 10 and 15 questions of different types: true/false, multiple choice, short answer and so on. Some questions are based directly on the text whilst others evaluate the student's understanding of the text by posing a question at the end of a hypothetical case. Answers are evaluated immediately with a brief explanation of the correct answer before the next question appears. The student receives a score on completion. Students can take as many (or as few) tutorials in any order they choose at any session and can repeat a tutorial at any time. Tutorials are organised in four modules, each covering two or three chapters of the book: an introduction to corporations, corporate financing, corporate management and corporate restructuring. There are 4, 5 or 6 tutorials in each module.

The program effectively enables students to revise what they have read and to test their knowledge. It also tests comprehension by asking the student a question about a case study. In a short introduction to the computer tutorials at the back of the textbook, McGregor-Lowndes explains that the program is not intended to replace lectures or tutorials in the traditional sense. Indeed, it could not. As presently designed, an answer has to be either correct or incorrect; there is no allowance for the borderline case which is the stuff of undergraduate tutorials. The case studies are kept simple and usually relate to only one question. However, as claimed, the program does allow students to understand 'the terminology and basics before moving on to higher order concepts and more advanced applications'. The short explanations given on screen simplify the text, occasionally to the point of being misleading. For example, a question is asked about ownership of shares. The 'correct' answer given is that property passes when the scrip and the transfer are handed by the transferor to the transferee. Although the text to which this question relates does not delve into the intricacies of legal and equitable assignment, it is made plain that different consequences attach to each mode of assignment. There is no indication of this in the computer program answer. In some cases, it also appears that the tutorials are based on the text of a previous edition. The graphics used in the computer program could also be updated to reflect the sophistication of the textbook.

The program contains an introduction to computer-based tutorials to enable any novice to complete them. The installation instructions, set out in the textbook itself, are simple and straightforward with the exception of the telegraphic 'change to the correct DOS Path' which should be amplified in the next edition.

Understanding Company Law, with its related tutorial package, is a useful and effective textbook. It provides an excellent starting point, not only for its

target student audience in commerce and accounting faculties and business people, but also for law students and practising lawyers who seek to gain an overview and practical perspective of a complex subject.

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An Introduction to Advocacy by LEE STUESSER (Sydney, Law Book Company, 1993) pp 166

Advocacy Basics for Solicitors by K TRONC and I DEARDEN (Sydney, Law Book Company, 1993) pp 415

Both of the books under review have a number of common features. First, both focus upon advocacy in the Magistrates' Court or before a judge rather than before a jury; second, both are directed towards the beginning or inexperienced advocate; and third, in keeping with the intended readership, both have a strong practical emphasis, making plentiful use of examples to illustrate 'how to do it'.

Both books will therefore be welcomed and not only by the novice. For too long writers on advocacy have eschewed the 'nuts and bolts' of their craft as if such matters were too basic to be noticed. And yet for most beginners (and perhaps for some who would demur at that description) it is precisely the basics which cause them so much anxiety. As Lee Stuesser puts it in his preface, 'what must be remembered is that the new advocate needs to learn the obvious.'

Accordingly, both books contain advice on how to prepare for the courtroom, how to tender documents and other exhibits, how to raise objections and how to prepare and organise material for speeches, all illustrated with examples. It is good stuff and many experienced advocates will wish that they had such assistance in their early days.

There are some important differences between the books, however. Lee Stuesser's book falls into two clear parts: part one deals with pre-trial preparation and part two with the actual presentation of a case at trial. The book therefore has a simple unity and progression that greatly assists readability.

The book by Tronc and Dearden, on the other hand, focuses rather more on advocacy in specific contexts, such as bail applications, committal proceedings, chambers applications and different kinds of trial. This approach is not per se any less valid than that of Stuesser, but it does perhaps pose greater difficulties for the authors in maintaining a sense of unity and momentum through the book as a whole and also in maintaining a clear presentation of each different advocacy situation. As we shall see, I do not think that the authors have entirely succeeded in overcoming these difficulties.

Lee Stuesser's book, *An Introduction to Advocacy*, is the Australian

offspring of a Canadian parent. Stuesser is a Professor of Law at the University of Manitoba in Winnipeg and has been greatly involved there in the teaching of advocacy skills. His original book, *An Advocacy Primer* (1990), grew out of that work. In the autumn of 1992 he visited Bond University where he taught a course on trial advocacy. The book under review is the product of that experience. Its parentage is obvious but it is none the worse for that. The Australian references and illustrations have been neatly tailored to replace the Canadian ones and in addition the opportunity has been taken to add some further references and allusions of more recent date than the Canadian book. While there is presently something of a vogue in producing local editions of successful overseas works on advocacy (for example, Mauet's *Fundamentals of Trial Techniques*, which presently exists in Canadian, New Zealand and Australian editions) and there is naturally some concern lest the very qualities which led to the success of the original be lost in the process of adaptation, there is no need for such concern in the present case. No doubt this is in part because the adaptation has been done by the original author with first hand experience of the jurisdiction for which the adaptation was made.

The key-note of the text is simplicity. The author declares in his preface that the book is intended to be 'an easy read' and he has kept to his word. He has also shown that 'easy reading' means 'informative reading' when the text is written by an author who combines knowledge with enthusiasm for the subject. Many an academic writer would do well to take a leaf out of this book. Although not a text on evidence, some of the rules of evidence are illustrated in a way that does much more to explain them and give them forensic reality than standard books on evidence do.

Part One, comprising the first four chapters, deals, as mentioned above, with preparation for trial. Topics discussed include the 'theory of the case', fact-gathering and legal research, preparation of witnesses, court etiquette and advocacy ethics and, most usefully, the compilation and contents of the 'trial notebook'.

The second part is structured, in part, around a fictitious case of battery, the materials of which are given in an appendix. These provide the context and illustrations for several advocacy techniques, such as examination in chief, cross-examination and use of prior inconsistent statements. In addition, forensic 'pressure points' which can cause so much concern to the new advocate are dealt with in a clear, uncluttered way. Among these are getting a document or other exhibit into evidence and the way to object to evidence. Finally, there is a chapter on the closing address.

This is a short book but books do not need to be long to be effective. An even shorter book is one that will be well-known to most Victorian readers interested in the subject, namely, John Phillips' *Advocacy with Honour* (1985). For those who feel that Phillips' book is too short the present book should be found to be an excellent alternative.

In keeping with the general purpose of his book Stuesser has avoided raising a heavy superstructure of references. But when books are referred to in the text or footnotes publishing details should be given and if I have a criticism

of Stuesser's book it is the omission of such details for books actually referred to.

Advocacy Basics for Solicitors by Tronc and Dearden is a much longer book. Like Stuesser's it is written for the beginner in advocacy. But the title may raise a query, as it did for Mr Justice Hampel who, as Chairman of the Australian Advocacy Institute, provided a foreword. In it he demurred at the implication in the title that advocacy differs in its nature depending on whether the advocate is a barrister or solicitor. One would think that the needs of novice barristers are not so different from those of novice solicitor advocates and that there is therefore no need for the somewhat tentative suggestion in the authors' preface that 'newly admitted barristers may also find it of some assistance'. There really is no need to perpetuate by implication the myth that barristers and solicitors somehow belong to different breeds. It is no doubt true that a new barrister who is fortunate enough to enjoy a busy practice from the start will in time gain an advantage over the solicitor advocate in the amount and variety of his or her advocacy experience. But in the novice state there will be little to differentiate barrister from solicitor — indeed, it may well be the solicitor to whom the advantage falls, particularly when, as at present, times are hard for the profession as a whole and solicitors are tending to do their own advocacy work instead of briefing members of the Bar.

The approach of the book is different from that of Stuesser. It focuses on different advocacy situations and in doing so the Queensland 'flavour' of the book tends to come out quite strongly at times. This can be a bit alienating, particularly when the detail descends to the administrative arrangements of the Brisbane Magistrates' Court. As against this it is no doubt true, as the authors point out in their preface, that the book contains much that is generic and of general application throughout Australia.

The book is lavish in the number of simulated examinations of witnesses, checklists and lists of key-points it offers. Some of the simulations are of considerable length. There is undoubtedly much here that is potentially of great help to the beginner. And yet I cannot avoid feeling that there is an element of 'overkill' and that the benefit which the book offers would be greater if the examples were shorter and more focused. The method of teaching by examples and simulations is excellent — if only textbooks meant for undergraduates could learn the same lesson. But examples and simulations only work properly if they concentrate the mind on the point being illustrated and thus clarify it. I cannot help feeling that some of those offered in this book are too long and diffuse. A remedy would be to break the simulated examinations of witnesses down into short chunks with a brief commentary on the purpose behind the questioning contained in each chunk.

Again, the organisation of certain chapters seems to be somewhat ad hoc. In chapter six, 'Trials', headings seem to occur without any sense of progression or development. It is odd, for example, that in such a chapter we should revert to cross-examination in committal proceedings when committals have been the subject of a previous chapter. There is a danger here that the sense of orderly presentation is being lost in a deluge of key-points and lists of 'how to do it-s'.

Finally, the language of lawyers is much under scrutiny these days. Stuesser's book contains nothing that would offend the most captious of 'plain English' advocates. I confess, however, to a degree of irritation with the number of occasions on which that suety phrase 'in relation to' occurs in Tronc and Dearden's book when a simple preposition would do. And why is 'prior to' so often preferred to the temporal 'before'?

It may well be that the value of *Advocacy Basics for Solicitors* will be most appreciated by lawyers who are preparing for an actual appearance in court. Such lawyers are likely to come to the book with definite questions already formulated in their minds so that for them the book may serve as a sort of advocacy reference. Stuesser's book will also serve this purpose but in addition makes well-structured reading for the budding advocate who lacks the stimulus of a pending court appearance.

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Evidence and Procedure in a Federation by ARCHIE ZARISKI (editor)
(Sydney, Law Book Company, 1993) pp xxv, 231

This volume brings together papers given at a conference held in Melbourne in April 1992. The conference was entitled, as the book is, *Evidence and Procedure in a Federation* and, as its name suggests, takes as its topic the reform of the law of evidence at a national level. The conference was a joint venture between the Australian Institute of Judicial Administration and the Law Council of Australia, and the contributors to the volume present a variety of perspectives on the way in which the rules of evidence should operate in a federal system.

In his preface, Mr Zariski identifies three tensions evident at both the conference and in the Australian rules of evidence as they exist at present: first, the 'inevitable contest' of jurisdiction; secondly, the 'delicate counterpoise' of judicial and professional involvement in the litigation process and thirdly, the potential conflict between lawyers' ideals about the laws of evidence and public demands.

The papers in this volume reflect those tensions, although only the first one could truly be said to be a result of a federal system. The volume is divided into four parts: 'Litigation in a Federation'; 'Evidence-Business Records'; 'Discovery and Subpoenas'; and 'Coercive Discovery and Interrogation'. The first part is obviously the most generalised, whereas the following three parts deal with particular problems of evidence and the conduct of litigation. At the end of each part, there are comments by other conference participants on the papers presented. As one would expect, there is a list of contributors, a table of cases and a short index. One would need to be familiar with the subject matter of the papers, and certainly with the terminology used in litigation and evidence topics in order to find one's way around the index.

Part One

The first paper, presented by D F Jackson QC, reflects on the structure of the judicial system in Australia, canvassing the development of the Federal and Family Courts and the permanent Courts of Appeal in the States. He also discusses the transfer of matters between courts and raises the possible future expansion of the jurisdiction of the Federal Court. It is a suitable introductory vehicle to begin the volume. The second paper, by Susan Crennan QC discusses a more particular issue: the introduction of a new Service and Execution of Process Bill to replace the long standing 1901 legislation. This Bill became the *Service and Execution of Process Act 1992 (Cth)*. She discusses the new approach to the institution of civil and criminal process which the Bill provides, such as the removal of the 'nexus' requirement in civil process and its replacement with a procedure by which a defendant may object to a particular venue for the proceedings (now s 20 of the 1992 Act). She also examines the procedure set out in the 1991 amendments to the *Service and Execution of Process Act 1901 (Cth)* and in the new Bill which relate to the service of subpoenas outside the jurisdiction. Her criticisms of both sets of provisions relate in particular to the way in which investigative tribunals (such as the Tricontinental Royal Commission) might make use of the provisions. Her major criticism is that the cumbersome and time consuming nature of the requirements concerning obtaining the leave of the court to serve a subpoena outside the jurisdiction made it impractical for such tribunals to use the Act and this in turn led to such tribunals not having access to as much information as they could have done were the procedure more straightforward. This, she argues, militated against the thoroughness of any such inquiry. She feels that a better practice would have been to make service of a subpoena permissible on the ground of relevance alone and then to provide the defendant who has been served with an objection procedure. However, the 1992 Act retains the leave procedure: see s 57.

J J Doyle QC presents an interesting paper on the current attempts at codifying the law of evidence and at making federal evidence law more uniform. Those attempts reflect the view of the Australian Law Reform Commission¹ that federal and Territory courts should apply a uniform law of evidence. However, as Mr Doyle points out, the new Commonwealth Evidence Bill only partially fulfils this aim because it allows for state legislative and common law rules of evidence to be enforced where they are not inconsistent with the Bill. In other words, the existence of this section means that the Bill falls considerably short of enacting a set of comprehensive statutory evidence rules. However, Mr Doyle puts the case for 'substantially' uniform evidence laws fairly strongly, although he points out that it will be, for some considerable time at least, impossible to forget that Australia is still comprised of different legal jurisdictions (despite, as he says, the inroads made by the cross vesting legislation) so that some amount of 'forum-shopping' will be inevitable. He proceeds to challenge the argument made in the ALRC report that Australia's

¹ Australian Law Reform Commission, *Evidence*, Report No 38 (1987).

rules of evidence need to be comprehensively restated, using as two examples the way in which the new Commonwealth Bill deals with the concept of relevance and the principles surrounding the admission of similar fact evidence. He concludes that a restatement of the rules of evidence is not warranted, although there is a clear need to update and revise the States' evidence statutes. However the enactment of the Commonwealth Bill in its present form (which does indeed constitute a restatement) is likely, in Mr Doyle's view, to produce more disadvantage because of the heightened differences in the evidence rules which will exist between the State and federal jurisdictions.

Part Two

The first paper is a short discussion by Justice Hayne of the Victorian Supreme Court about the admissibility of business records. As he points out, the premise underlying each of the state statutory provisions which admit business records as evidence of the truth of their contents (that is, as an exception to the rule against hearsay) is that the matters recorded there are likely to be a more accurate reflection of what occurred in the daily running of a particular business than a person's memory.² He then discusses the two current legislative approaches to business records and the proposals of the New South Wales and Commonwealth Bills, particularly on the issue of machine generated records.

Following on this theme, the paper by J McL Emmerson QC deals with the way in which the law of evidence treats computer and other electronic data and how well the laws of evidence have kept pace with technological advances. His argument is that the new Commonwealth Evidence Bill does not provide much of an improvement over current statutory approaches, for it persists in retaining the hearsay rules and simply attempts to facilitate the proof of the data via a series of presumptions about how the data was collected and stored. This, he argues, is insufficient for all cases. Instead he proposes that, in the area of electronic data material, courts should not be bound by the hearsay rule but should consider the question of the admissibility of such evidence strictly on the criterion of reliability.

The hearsay theme is continued in the next paper by Justice Beaumont, of the Federal Court, which deals with the admission of survey evidence, a type of evidence conventionally rejected because it is said to be based on hearsay. He outlines the common law approach which, he argues, is softening its previously hard line against survey evidence and admitting such evidence where the survey has been properly controlled. He then considers the new Commonwealth Bill and observes that its provisions concerning the admission of 'first hand hearsay' and opinion evidence make it likely that there could, under these provisions, no longer be a blanket ban on the admission of survey evidence. Ultimately however, he considers that the importance of survey evidence will lie not in its initial admissibility, but in the

² See *Albrighton v Royal Prince Alfred Hospital* [1980] 2 NSWLR 542, 548-9 per Hope JA.

weight to be accorded to it, and this can only be decided as a matter of 'professional judgment' by a court, dependent on the way in which such evidence is presented.

Part Three

The first paper in this section, by C M Branson, challenges the courts' attitude to pre-action, subsequent and third party discovery. She concentrates in particular on pre-action discovery and questions the emphasis the current discovery process places on parties actually listing all relevant documents. Such lists, as she points out, rarely stay current for even the time prior to the commencement of proceedings. She argues that it may be far better to allow parties to concentrate on the actual production of documents through which they are able to understand properly what the other party's case is to be. Access to the documents should, she argues, be the primary and most important step. She then suggests — while acknowledging that the suggestion requires a fundamental change in attitude — that it be up to the party without control of the documents to make up a list of the ones which that party considers relevant to the proceedings.

Making sense of the volume of material which parties seek to put before the court also occupies the discussion of Justice Marks of the Victorian Supreme Court about voluminous, multiple and limited action discovery. This problem stems mainly from the large complex commercial cases which now come before the courts, and it is the courts who must then face the issue of how to deal with the number of documents both parties say are relevant to the proceedings. He considers that the court's power to order only limited discovery, a power hitherto only sparingly exercised, is one way in which a court can retain control of its proceedings. Indeed the general theme of his whole paper is that long and complex litigation can only be efficiently conducted if the court itself takes some degree of control and responsibility for the progress of the proceedings. Fundamental to this approach is control over the time given to parties to complete each pre-trial stage, the time at which discovery is ordered (early rather than late) and continuing close supervision by the court of parties' compliance with given time frames.

Continuing the discussion of court control over voluminous documentation, Justice White, of the Queensland Supreme Court, suggests that there is now a real case to be made for curtailing a party's right to discovery, and for encouraging parties to make use of existing court procedures (such as notices to admit facts) to narrow the issues in dispute and therefore reduce in number the necessary discoverable documents. As an alternative to current procedures, Justice White suggests that the obligation to discover might be replaced with a 'duty to disclose', modelled on a United States' proposal where, upon delivery of a pleading to another party, all relevant documents are delivered as well.

Another important pre-trial procedure — the issuing of a subpoena — is considered by Justice French of the Federal Court. His paper deals with the origins of the subpoena rules and how each Australian jurisdiction frames its

subpoena rules today. Like other commentators, he notes that the courts are taking a more interventionist role in the issuing and return of subpoenas, in an effort to make the administration of justice more efficient, and that such efforts can only be welcomed.

Part Four

S P Charles QC gives the first paper in this part and he looks at the power of the Trade Practices Commission under s 155 of the *Trade Practices Act 1974* (Cth) to require a person to furnish information, produce documents or appear before the Trade Practices Commission. His discussion focuses on the possible ways in which a person may avoid compliance with s 155, such as a claim of privilege (legal professional privilege or the privilege against self-incrimination), use of concepts such as contempt and the use of administrative law principles (such as whether the rules of natural justice apply to s 155) and the *Administrative Decisions (Judicial Review) Act 1977* (Cth). As he points out, a claim to privilege is an unlikely defence to s 155, particularly a claim based on the privilege against self-incrimination. This is even more true since the High Court decision in *Environment Protection Authority v Caltex Refining Co Pty Ltd*,³ which denied that this privilege could be claimed by corporations. He concludes that claims based on administrative law principles are more likely to succeed and are indeed being developed by the courts.

The role of another statutory authority — the Australian Securities Commission — is considered by R P Austin. In particular he considers the ASC's powers of investigation, and the judicial response to challenges to those powers. He characterises that judicial response as being one which accords primary importance to the public interest in allowing the ASC to gather the information it needs to properly investigate corporate activities and which accords secondary importance to the civil liberties of the persons involved. This concerns him, particularly in respect of confidentiality of information between a person served with a notice (whether a lawyer or some other person) and that person's client.

The final paper in this section is by Justice D G Hill of the Federal Court about the coercive powers of investigation granted to officers of the Australian Taxation Office. Like Mr Austin, he interprets the judicial approach to these powers as being one which favours little impediment being placed to their exercise, although he notes that where the investigative powers are not exercised in good faith or for a proper purpose, the courts have been ready to intervene. Like the other commentators in this section, Justice Hill would like to see some clarification by the legislature of the role (if any) to be given to both legal professional privilege and the privilege against self-incrimination in resisting coercive powers of investigation.

³ (1994) 68 ALJR 127.

Conclusion

The volume covers many interesting, if somewhat specialised, issues about the conduct of litigation throughout Australia. Only some of the papers are strictly true to the topic of evidence and procedure in a federation, in that they address the problems encountered in conducting litigation in a federal system. Other papers appear to have a federal flavour only because they deal with Commonwealth legislation. The papers in Parts Three and Four in particular do not address the tensions between jurisdictions or problems in shifting between State and federal courts in the same way that the papers in the two former parts do. It is useful to have recorded the comments of other participants at the end of each section, however the technique adopted of enclosing the contributor's own comments in boxes interspersed throughout the text is somewhat distracting and confusing. Distracting because it is difficult to decide precisely when one should read the boxed pieces — during or after reading the text itself. Confusing because the authorship and purpose of the boxed pieces is only briefly and inconspicuously referred to in the preface.

The concentration of some papers — particularly in the first two parts — on provisions of the new Commonwealth and New South Wales Evidence Bills will date this volume if the provisions change in any essential way from the manner in which they were framed when these contributors considered them. This problem is, of course, inherent in any discussion of current law reform proposals and is only a minor detraction from the usefulness of the volume.

The potential audience for this volume is a little difficult to gauge. In its speciality it is well above the reach of law students, except perhaps those engaged in very specific research projects. The concentration on problems faced by courts in the management of litigation would suggest it is a volume most suited to those actually involved in litigation, whether solicitors, counsel or judges. One can always hope that our legislators (both State and federal) might also have their attention drawn to the comments and criticisms made by those so well placed to do so, for so much of the necessary reforms discussed in this book must be achieved by statute.

As Mr Zariski says in the preface, perhaps the main achievement which this volume reflects is the bringing together of so many distinguished contributors to many aspects of the judicial system in a forum where they could pool their comments and criticisms (and occasional praises) on the administration of justice in Australia. Such co-operative efforts can only have a positive effect on future law reform proposals and this benefit, in combination with the depth of judicial experience and knowledge brought to the conference by all contributors, makes this volume a worthwhile publication.

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Criminal Law by PETER GILLIES (3rd ed, Sydney, Law Book Company, 1993) pp lxxviii, 840

It seems fair to say that any book review is likely to depend as much upon the reviewer's particular perspective as upon the content of the book itself. Hence it may be expected that lawyers, academics and students will each have different opinions on the merits and shortcomings of Peter Gillies' third edition of *Criminal Law*. No textbook on so large a topic as criminal law could hope to provide detailed discussion of all significant issues, include comprehensive references to statutes and both reported and unreported cases, critically analyse theoretical problems of criminal responsibility, and, at the same time, be effective as an introductory work offering students a basic understanding of criminal law principles, prohibitions and defences. Gillies, wisely, has not attempted to cover every possible angle on the substantive criminal law. His book is primarily a descriptive introduction to the subject, but it is one with enough detail about specific concepts and sufficient references to also be a useful initial resource in the practitioner's office. The jurisprudential examination of criminal law is clearly left to other works. Similarly, although Gillies makes the odd mention of legal inconsistencies which need to be resolved, he provides little analysis of policy and law-reform issues.

As with previous editions, this one focuses only on the 'common law' jurisdictions of Australia: New South Wales, the Australian Capital Territory, Victoria, and South Australia. Criminal law in Queensland, Western Australia, the Northern Territory, and Tasmania is all but ignored, as each of these jurisdictions is regulated by a criminal code. Notwithstanding that the size of the text would become even more intimidating were the law of these states included, there is a sense of incompleteness as it now stands. Most of the issues addressed in *Criminal Law* are also confronted in the code jurisdictions, and brief references to relevant code provisions and case citations would make the text a more comprehensive resource to its readers. To be fair, however, it might be more appropriate to censure the lack of uniformity amongst Australian criminal laws, than to criticise Gillies for not discussing all jurisdictions.

Criminal Law is neatly divided into seven sections. The first is a fairly detailed introduction to the principles of criminal liability, particularly the concepts of *actus reus* and *mens rea*. Next comes a section on 'indirect participation in crime', which covers such topics as corporate, vicarious, and accessory liability. The third section deals with general defences, and is followed by three sections on various classes of offences and a final section on 'miscellaneous matters'. Those areas which are included are covered quite thoroughly, but there is a notable absence of discussion of 'white collar crime', political offences, and drug offences (although the concept of possession is reviewed in some detail).

The index is quite detailed, and cross-referencing throughout the book is very good. However, a bibliography of texts, journal articles and government

reports would be a very welcome addition to any future editions. At present, any such references are confined to the footnotes.

Interestingly, the section on formal defences makes up the largest portion of the book. It begins by distinguishing 'primary defences' such as automatism and intoxication (which deny 'that one or more of the elements of liability was present in [the defendant's] conduct' (p 203)), from 'secondary defences' such as self-defence and insanity (which 'relieve [the defendant] from a liability which has been proven' (p 204)). Gillies then discusses several defences in detail, providing sufficient description and case references to give readers a healthy start towards fully understanding the subject. For instance, as a lawyer steeped more in Canadian criminal law than Australian, I found that reading chapter 12 gave me a reasonable understanding of the *O'Connor* decision,¹ and of how intoxication may operate in Australia to negate proof of either the voluntariness of an act or the requisite *mens rea*. This contrasts with the Canadian position which, at least for the time being, continues to allow intoxication only to negate 'specific intent', but not 'general intent'.²

With respect to the discussion of offences, *Criminal Law* contains detailed analysis regarding traditional property crimes, crimes against the person, and the inchoate or 'derivative' crimes such as incitement, attempt and conspiracy. A brief review of offences against justice is also included, in the section on 'miscellaneous matters'. Although Gillies unfortunately does not follow a consistent format in discussing each of the offences, for the most part he does include both an overview of general principles and specific consideration of the elements of each offence. Where statutory provisions have replaced or supplemented common law rules, Gillies outlines the effect of the changes.

It is worth noting that Gillies generally reviews each jurisdiction separately under each offence classification. For example, under the heading 'Property Offences', chapters 19, 20 and 21 discuss the laws in New South Wales and South Australia, while chapter 22 separately discusses the laws of Victoria and the ACT. Although this makes the process of comparison between jurisdictions slightly more difficult than if all jurisdictions were considered together under each heading,³ the advantage is that a reader can easily locate the relevant discussion of an offence for each state. For the few offences where there are not substantial differences between states, for example homicide, they are discussed together.

The final section of the book comprises four chapters of very useful information, unfortunately lumped together under the heading 'miscellaneous matters'. The first of these chapters looks at 'standard statutory words', and Gillies has rightly been praised for analysing words such as 'recklessly', 'dishonestly', 'knowingly' and 'supply'.⁴ However, it is surprising that the first three of these words are in fact not even considered in the 'standard statutory

¹ *R v O'Connor* (1980) 146 CLR 64.

² See E Colvin, *Principles of Criminal Law* (2nd ed, 1991) 303 ff.

³ As is done, for example, in B Fisse, *Howard's Criminal Law* (5th ed, 1990).

⁴ See, eg, G Craddock, Book Review (1990) 15 LSB 231 (review of second edition); also B McSherry, Book Review (1994) 68 LJ 304 (review of third edition).

words' chapter, but are merely cross-referenced there. I suggest that those words which *are* analysed in this chapter (maliciously, wilfully, false/falsely/falsify, permits/suffers/allows, cause, use, and supply) would also be dealt with more appropriately in chapters two and three of the book, where *mens rea* and *actus reus* are discussed in detail. There is no obvious reason for treating these particular concepts as merely 'miscellaneous', while words such as 'intentionally' and 'recklessly' are considered to involve basic issues of liability. Secondly, the content of the next two chapters, dealing with 'fraud' and 'possession' respectively, could be relocated to the section considering general principles of criminal liability and the section on property offences. Finally, the chapter on 'offences against justice' might be included, if future editions permit expansion, in a broader section reviewing various offences against public order (including treason, hijacking, etc).

One further comment must be noted: at times Gillies' writing style may make a student's task of understanding basic concepts more difficult than it need be. Very long, complex sentences are common, and often are punctuated by parenthetical statements of questionable importance. In addition, there are quite a few instances of editorial carelessness which detract from the overall presentation. Omission of the word 'not' (p 55), substitution of the word 'offence' for 'defence' (p 20) and vice versa (p 213), and use of 'content' for 'contend' (p 66) are just a few examples. Not only are these distracting to the reader who has to satisfy himself or herself that what is written is not what is meant, they run the risk of causing embarrassment to anyone who cites a misworded passage at face value.

Whatever quibbles I may have about structure and style, the book as a whole does provide a very good starting point for researching the most common issues of substantive criminal law. It does not cover every topic that it might, but it is as comprehensive as a general text can be with respect to those topics that are included. It is also more current than any other Australian criminal law textbook. Ideally, future editions will see minor problems ironed out, a bibliography added, and perhaps even structural changes to enhance clarity. In any case, *Criminal Law* is a useful asset for any student or practitioner.

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