

Introduction to Criminal Law in New South Wales, by R. P. ROULSTON, LL.B. (Syd.), LL.M. (Tas.). (Butterworths Pty Ltd, Sydney, 1975), pp. i-xiv, 1-225. P/B recommended retail price \$10.00. (ISBN 0 409 43628 3).

The criminal law in Australia is confused, complex and diverse. There are, in effect, seven criminal law systems operating for better or worse amongst a population of less than fourteen million people. While there is much uniformity there is, by the same token, a great diversity of approach to the same problems. Although the seven systems are rooted in the same common law principles—whether due to codification or statutory consolidation—many departures have developed. This is so notwithstanding the valiant attempts by the High Court of Australia to formulate clear principles and rules. Progress has been slow, and by necessity, haphazard due to the vagaries of the appeal system. Add to this the fact that legal representation has been outside the reach of many defendants so that many issues that could have been argued have instead been decided by default,

and we have some measure of the myriad difficulties facing any writer on this subject.

It should be noted perhaps in passing that the common law generally as far as the criminal law is concerned is in an unsatisfactory state. Hence in the last few years we find the House of Lords grappling to formulate basic principles in relation to what one would have hoped to be fairly well settled areas of law, such as homicide,¹ rape,² attempts,³ and duress.⁴

It is in this context that we welcome any work which will shed some light on this very important area of the law. Any text on the criminal law should therefore expose the problem areas especially if that book is meant to instruct future practitioners of the law. This is indeed the great value of the leading British text-book on the criminal law, Smith and Hogan,⁵ which has been cited with much approval in many of the leading British decisions.

It would be unfair to compare Roulston's text to this work, although he has apparently been heavily influenced by it. Roulston claims that he has written his book to supplement the standard texts. His purpose is to provide an "initial guide" to people coming new to the study of the law. What does one look for in a "supplementary initial guide"? How does one use such a book? Do we read Roulston first and then go to the standard texts or read the standard texts and then go to Roulston? Do we perhaps go to Roulston for preliminary reading before undertaking the detailed study of the principles of the criminal law? These questions must be considered, for the usefulness of the book depends on the answers.

As a teacher of criminal law I had great difficulty in finding answers to these questions. As a preliminary introduction to the study of the criminal law the book is too detailed and not excursive enough. No overview emerges to provide the map to the detailed study that it precedes. The issues that should, perhaps, be broached in a preliminary book (such as the nature of crime, problems of definition and the context of crime) are not well developed.

As a substitute for what Roulston calls the standard texts the book leaves a lot to be desired. What we have are large slabs of undigested quotations from some of the leading cases. The principles are not clearly formulated, in most cases the issues giving rise to problems are not teased out, and in some most important areas, such as manslaughter for example the discussion is incomplete. While it is agreed that this is an area fraught with difficulties, as Roulston rightly points out (pages 90, 91), nevertheless, there must be some attempt to clarify the issues so that hopefully the lawyers of the future can address themselves to these for the benefit of the rest of the community. This must surely be the hallmark of any academic discussion of the criminal law.

As a guide to some of the New South Wales decisions relating to the criminal law the book is at its best. Here too, however, there is still the problem of long quotations, and some of the more important cases are not discussed in any detail at all. Perhaps the book is meant to be read alongside Howard's text⁶ on the criminal law (which the author cites often with approval). If what Roulston intends for his book is that it be read as the New South Wales addendum to Howard, he has succeeded.

¹ *Hyam v. D.P.P.* [1975] A.C. 55.

² *R. v. Morgan* [1976] A.C. 192.

³ *Haughton v. Smith* [1973] 3 All E.R. 1109.

⁴ *Lynch v. D.P.P.* [1975] 1 All E.R. 913.

⁵ J. C. Smith and B. Hogan, *Criminal Law* (1973 3rd ed.).

The question that perennially arises in this area is as to the suitability generally of introducing students to the principles of the criminal law through a text rather than through the cases. Smith and Hogan have perhaps conceded this point by producing their own book of cases and materials as a teaching aid.⁷ Their text-book serves as an academic and critical exposition of the principles and problems in the present day criminal law. As a teaching aid neither Roulston nor Howard is a substitute for a close analysis by students of some of the leading cases. Perhaps some initial confusion is necessary if the student is to fully develop and grasp the subtleties and complexities of the criminal law. Indeed it is obvious that the criminal law is in a confused state and arguably it is only by a thorough exposition of the root assumptions that we have any hope of ameliorating the situation.

Some points of detail rather than approach. While this is not the place to enter into a detailed discussion of the law as postulated by the author, I must admit to a slight confusion when, after being warned of the undesirability of using the terms "recklessness" and "gross or criminal negligence" interchangeably, Roulston himself proceeds to use the term "recklessness" in his definition of criminal negligence (pages 19-21).

The discussion of strict liability (page 22 ff) is pitched on the basis that a trend can be discerned both in the British and Australian cases that the doctrine is at least unlikely to be further expanded. One would have liked a reference to a most recent discussion by the House of Lords on this topic, namely the case of *Alphacell Ltd v. Woodward*⁸ where the Law Lords qualified to some extent the optimism generated by *Sweet v. Parsley*.⁹

The author would find support for his views on the relevance of proportionate retaliation in the defence of provocation (page 98) in the English Court of Appeal decision, *R. v. Brown (Egbert Nataniel)*.¹⁰ Again, the House of Lords in *R. v. Morgan*¹¹ has adopted the author's view in relation to the mental element in the crime of rape (page 124).

A final point: I was disappointed that there was no table of statutes, especially as the criminal law in New South Wales is, in the main, embodied in statutes.

To sum up then this little book is a welcome addition to sparse literature on the criminal law in New South Wales, however as a teaching aid it lacks comprehensiveness and critical bite.

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⁶ C. Howard, *Australian Criminal Law* (1970 2nd ed.).

⁷ J. C. Smith and B. Hogan, *Cases and Materials on Criminal Law* (1975).

⁸ [1972] A.C. 824.

⁹ [1970] A.C. 132.

¹⁰ [1972] 3 W.L.R. 11.

¹¹ Note 2 *supra*.

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