

BOOK REVIEWS

The System of Criminal Law, by A. P. BATES, LL.B. (Wales), Solicitor of the Supreme Court of England; T. L. BUDDIN, B.A., LL.B. (Hons.) (Syd.), B.C.L. (Oxon.), LL.M. (Illinois), Senior Lecturer in Law, University of New South Wales, Barrister of the Supreme Court of New South Wales and D. J. MEURE, LL.B. (Tas.), LL.M. (Sheffield), Lecturer in Law, University of New South Wales, Barrister and Solicitor of the Supreme Court of Tasmania. (Butterworths, Sydney, 1979), pp. i-lvi, 1-984 with Table of Statutes, Table of Cases and Index. Cloth recommended retail price \$46.00. (ISBN: 0 409 30440 9). Paperback recommended retail price \$35.00 (ISBN: 0 409 30441 7).

This book has been available long enough for some practical experience in using it to have been gained. This reviewer has not used it himself for teaching purposes but he has consulted with colleagues who have. Their evidence tends to confirm the impression gained from reading the text. There are some points in favour of the book but a number of reservations have to be made. The overall assessment is that this publication tries to cover too much ground and is not altogether consistent in its apparent policy aims.

In its favour are the following. In general the selection of cases is useful and appropriate, and the extracts are well selected and presented. Most of the questions posed in conjunction with major decisions are good, provoke thought and should lead to searching and illuminating discussion. In addition the reading guides included in each section are useful for further research or for use in conjunction with tutorials which supplement a normal lecturing program.

Having said that however, the following fairly substantial reservations have to be made. At the outset Chapter 1 strikes this reviewer as too long and rambling to be a satisfactory introduction to a criminal law course. It may be conceded that to some extent a comment of this kind depends upon one's individual view of what a basic criminal law course should be all about. Nevertheless there is a cart before the horse, or running before one can walk, element about an introductory chapter which embarks upon a detailed examination of the Hart-Devlin controversy. That debate is mainly concerned with questions arising from the so-called victimless crime. The rest of this book however, is very properly devoted almost exclusively to crimes involving harm to particular victims. What is here presented as an introduction strikes one as more appropriate to a concluding chapter which might alert the interested student to wider and more abstruse problems of criminal law than are appropriate to an initial training in the subject.

Chapter 2 shares a fault with Chapter 1 in that it is also far too long for a course on substantive criminal law. The user has to face a major job of editing himself in order to bring out the essential points which the student needs to grasp in order to acquire a useful background for the

understanding of the substantive law. The kind of basic information which this reviewer has in mind is, for example, the respective functions of judge and jury and the operation of the appeals system. Moreover the manner in which important information is dealt with is not always satisfactory. One aspect of criminal procedure which certainly has a significant bearing on substantive criminal law is the power of arrest. This subject is covered at pages 93-97, with additional material at pages 935-936. In the opinion of this reviewer these passages give an incomplete and misleading account of the Victorian law. Moreover such leading cases as *Christie v. Leachinsky*¹ and *R. v. Inwood*² are only referred to. They need more thorough treatment than this.

The authors claim that the book is largely self contained. The preface at page viii says that students using it will require few additional materials. This aspiration, which may have been over-ambitious in the first place, is not attained. Many of the questions posed cannot be answered without going beyond the book. As an example, question 3 on page 96 may be cited. A satisfactory answer could hardly be furnished without consulting the report of *Christie v. Leachinsky*. There is nothing particularly wrong with that until one puts the problem in the context of an enrolment of about 250 students trying to find that particular case at more or less the same time. This reviewer is given to understand that the answer made by the authors is that the questions are largely designed for small group teaching. Maybe, but this does not solve all the problems. If the small groups are simply tutorials constructed out of a much larger enrolment, the point about pressure on the library remains valid. If it is envisaged that the book will be used only for specialised small enrolments, one would have expected far less space to be devoted to the basics.

On the same page of the preface the claim is made that the book can be adapted to the needs of a variety of types of criminal law course. The other side of this penny is the point of view developed in this review, that the book really does not add up to a consistent whole. Whatever sort of course one is teaching, there seems to arise a need to omit large parts of the text and supplement it with other texts produced by the user. This is not a satisfactory situation having regard to the bulk and expense of this publication. To argue that it can be adapted to a variety of purposes is much the same as admitting that it is not well adapted to any single one of them. Another example which leaps to the eye of the Victorian reader is that the coverage of theft is of limited value in this state because of the fundamental changes effected by the Crimes (Theft) Act (1973). It is no doubt true that limitations of space preclude proper coverage of the particular situation in this state, but one is then left questioning whether the authors have not after all brought this difficulty upon themselves by attempting too much. Large supplementary materials are again necessary.

¹ [1947] A.C. 573.

² [1973] 1 W.L.R. 647, [1973] 2 All E.R. 645.

Contemplating difficulties of this kind one is led to question the wisdom of devoting so much space (Chapters 11-13) to drug offences, public order offences and motor traffic offences. These are important topics, particularly to the practitioner, and raise wide and fundamental questions about society. Nevertheless, like the Hart-Devlin controversy, they seem more appropriate to consequential or specialist courses than to the sort of basic criminal law concepts to which the great bulk of the book is devoted. The space used on these matters might better have been devoted to more thorough coverage of such topics as theft and arrest. Moreover, interesting though drugs, public order and automobiles may be in the larger context of the ordering of society, in themselves they throw little or no light upon the general principles of the criminal law as a body of law.

Two small inaccuracies have been noted. On page 241 (paragraph 3.4) there is a brief reference to the defence of infancy and a reference back to paragraph 2.50 (page 129). Unfortunately paragraph 2.50 does not include an adequate account of the defence of infancy either. On page 295 (paragraph 3.38) Jacobs J. is credited ungrammatically with a "dicta" to the effect that foresight of possibility of death is enough for murder. His judgment extracted on page 280 reads as if it rejects that proposition.

Colin Howard*

The Brethren, by B. WOODWARD and S. ARMSTRONG. (Simon and Schuster, New York, 1979), pp. 1-467, with Index. Cloth recommended retail price \$26.00 (ISBN: 0 671 24110 9).

"A Court which is final and unreviewable needs more careful scrutiny than any other. Unreviewable power is the most likely to self-indulge itself and the least likely to engage in dispassionate self-analysis . . ." (page 5)

With these introductory words, quoting Chief Justice Warren Burger at a judicial conference whilst a Circuit Court of Appeals judge, Woodward and Armstrong embark on an examination of the United States Supreme Court. The prospect of revealing the inner workings of the Court is fascinating. The result is disappointing.

The book covers the period from 1969 to 1976, the first seven years of the Chief Justiceship of Warren E. Burger. It commences with the events leading up to Burger's appointment and thereafter the chapters deal in chronological order with each annual court term. The resignations of Chief Justice Warren, Justices Black, Harlan and Douglas, and the appointments of Justices Blackmun, Powell, Rehnquist and Stevens as well as Chief Justice Burger occur during this period.

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