BOOK REVIEWS

Wisconsin Judicare: a Preliminary Appraisal, by SAMUEL J. BRAKEL, (American Bar Foundation, Chicago, 1972), pp. 122. U.S. $2.50 (paper-bound).

One of the fiercest debates in the area of legal services for the poor in the United States is that between proponents of Judicare on the one hand and supporters of salaried legal services on the other. This slim book is a welcome addition to the debate as it tends to favour the Judicare approach which has been unpopular with most other legal writers.

In order to understand the argument, it is necessary to start with definition. As Brakel explains, "the primary distinguishing feature of the Judicare method is delivery of the service through the use of private attorneys freely chosen by clients". (p. 2) The Wisconsin program is exceptional in adopting a Judicare approach. Most programs funded by the Office of Economic Opportunity prefer to supply legal services to the poor through neighbourhood law offices staffed by full-time salaried lawyers.

Many contributions to the Judicare/Neighbourhood Law Office debate have been purely theoretical. They have not brought the questions down to earth by looking at the merits and disadvantages of particular functioning programs. Brakel performs a useful service in describing a particular program in operation and pointing out the features which are peculiar to it.

A major argument in favour of Judicare is that it gives the poor a choice of lawyers and thus leads to equality with other members of the community who can choose and pay their own lawyer. Brakel provides evidence that Wisconsin Judicare clients do show an ability to exercise effective choice of a lawyer and to be discriminating in their comments on his performance. He concludes that overall "Wisconsin Judicare appears to be a viable and valuable program". (p. 109)

The limitations on the validity of this conclusion should be noted, however. The book's subtitle is "a preliminary appraisal" and Brakel is at pains to stress that the data gathered are incomplete and the report is tentative. The samples of people interviewed are small, totalling only thirty-seven Judicare clients, for example. This evaluation is limited to an assessment of the program's effectiveness, not its economics. The author adopted a noncomparative approach, so that he disclaims any attempt to weigh up the relative merits of Judicare and the rival methods of delivering legal services to the poor. By thus narrowly defining the terms of the enquiry he avoids the reproach that he has not succeeded in making valid comparisons. But the very narrowness of his aim reduces the value of the book particularly for the non-specialist reader.

Since he does not set his work in a wider context and does not spell out in any detail alternative methods of delivery of legal services to the poor, it helps if the reader has sufficient background to draw out for himself the implicit comparisons with other programs. But the work would appeal to a wider audience if the implicit comparisons had been made explicit, even though that would have made the author more susceptible to attack by opponents of Judicare.

Does the book then have anything to contribute to the Judicare/Neighbourhood Law Offices controversy? And is it of any relevance to the Australian reader? The answer to the latter question is "Yes", provided the reader has some understanding of the competing theoretical positions and the ability to relate the specific Wisconsin material to wider issues. A similar debate is beginning to take shape in this country. On one side are those who support existing legal aid schemes, controlled by the legal profession in each state. These are essentially Judicare schemes, as legal services for the poor are provided by lawyers in private practice. The poor are added to

the existing clientele of the lawyer's office. The poor client applying to an Australian legal aid service can choose his own lawyer, if he has any preference. Those who favour this approach see the future in terms of continuation and expansion of these law society schemes. But there is increasing support in Australia for the salaried neighbourhood law office model. The Attorney-General's plans for the Australian Legal Aid Office represent one move in this direction. Aboriginal Legal Services are another example. "Free Legal Services" set up with law student involvement also mark the trend towards the neighbourhood storefront office concept, though these are so far staffed by volunteers rather than by salaried lawyers.

Brakel does lend some support to the Judicare side of the controversy. Though he states that he is not making a comparative study, he admits that implicit comparisons are inevitable. To the extent that he demonstrates the value of the Judicare program, he appears to be weakening the case for alternative systems.

But it is clear that the Wisconsin scheme is not "pure" Judicare. The central office takes what are known as "impact" cases away from private attorneys. These are cases which involve group representation and those which specifically aim to reform the law; appeals are also included within the term. To this extent the Wisconsin program departs from the theoretical Judicare model and accepts the neighbourhood law office philosophy that lawyers who specialize in handling matters for the poor are able to provide a more expert service.

Particularly interesting is the fact that Indians are a group for whom the central office has made special provision. Brakel refers to the problems created by the attempted "termination" of the Menominee tribe. (p. 89) The Federal government tried to terminate its special relationship with the tribe. In place of a reservation with a call on federal resources, a county was created with no social resources and two-thirds of its population below the poverty line. The central Judicare office set up a special unit to handle the legal problems involved. Cases for individual Indians which are not considered "impact" cases are still handled by private attorneys. Brakel considers that here "the exercise of choice becomes particularly (and paradoxically) meaningful". (p. 54) By this he means that Indians, who generally distrust local attorneys, have the opportunity to choose a lawyer from outside the county. But here, it seems to me, the noncomparative approach breaks down. The implicit comparison being made is one with a scheme under which poor Indians would be forced to use a local lawyer, identified as a member of the white establishment. Clearly the Judicare program with its wide freedom of choice is superior to this. Brakel has not considered the other alternative of an office with salaried staff located in Indian country and limited to Indian clients. This would appear to provide the best legal assistance for Indians. In Australia it was considered necessary to set up a service specifically for Aboriginal clients largely because of their distrust of white institutions.

Perhaps the most salutary lesson to be drawn from Brakel's book is, as he himself says, that no "pure" approach is likely to be effective. The debate over Judicare or Neighbourhood Law Office may be misconceived, since a combination of approaches, taking account of particular needs, will produce the most satisfactory results. Translating this into Australian terms, law societies and those who favour salaried legal services would do well to divert their energies from attacking each other or trumpeting their own virtues. Instead they might concentrate on delineating the areas in which each can be most effective.

This book should provide some clues to assist them in this task. Even those with a basic familiarity with the issues, though, will need to supplement it by reading other works on Judicare. (See, for example, Goodman and Feuillan, "The Trouble with Judicare", 58 A.B.A.J. 476 (1972); and Brakel, "The Trouble with Judicare Evaluations", 58 A.B.A.J. 704 (1972). Brakel's more recent article (in [1973] Wis. L. Rev. 532) is a report on the later phase of the research, which included explicit comparisons between Judicare and staffed law office programs. In this he makes his preference for Judicare even clearer than in the book under review.

E. M. EGGLESTON

The Judgments of Sir Owen Dixon, edited by NORVAL H. DOOLEY, (Law Book Company Limited, Sydney, 1973), pp. 825. $30 (hard-bound).

Under the auspices of the Victoria Law Foundation this book has been primarily published as a tribute to the late Right Honourable Sir Owen Dixon, O.M., G.C.M.G., formerly Chief Justice of the High Court of Australia. It was his brilliant analytical exposition of the general law and his unexpected death which prompted this text's premature publication.

Unlike so many law texts of the present day, this book is in itself an innovation in so far as it contains the selected judgments of a single Justice of the High Court of Australia. Although the book contains selected judgments in some thirty-eight different groups of subjects, it nevertheless does have some obvious shortcomings. The editors have failed to include as part of the selected judgments a rather substantial part of Sir Owen Dixon's decisions in relation to the area of public law. This may have been the natural result of the volume being based primarily on a selection of subject-matter rather than an alternative selection of cases. It should be noted, however, that had these judgments (or a selected part of them relating to the field of Public Law) been included they would in themselves have required a complete second volume.

It also fails to include judgments of other Justices in which his Honour announced that he concurred; and it omits some decisions which, although relevant to the subjects dealt with, were considered to depend too much on the special provisions of local statutes or regulations or on the wording of documents or special facts. Furthermore the editor and the members of the panel, in failing to state whether the particular judgments were either in the majority or minority have deprived the reader from more fully appreciating the context in which the judgments were originally delivered. It is interesting to note that some members of the panel who undertook the work of appraisal, found it proper to introduce one or two cases decided during Sir Owen Dixon's short term as acting-Justice of the Victorian Supreme Court. This undoubtedly gives the reader a greater scope of appreciation in the true development both in the style and reasoning of Sir Owen Dixon's judgments and how he took a case to pieces to see what it involved.

As to its practical use the text provides little aid both to members practising within the profession, to academics and students completing their degree courses other than as an extra curricula activity. As an addition to any law library this book is undoubtedly a must for it clearly portrays the functioning of perhaps Australia's greatest and exact legal mind. Despite the text's total lack of practical use, its educational value as witnessed in the method of reasoning and presentation in the selected judgments is immeasurable. The reader's only regret is that a second complementary volume dealing with the area of Public Law has not found its way to publication.

J. BRONDOLINO

The Liberal Theory of Justice: A Critical Examination of the Principal Doctrines in A Theory of Justice by John Rawls, by BRIAN BARRY, (Oxford University Press, Oxford, 1973), pp. x and 168. $8.60 (hard-bound) and $3.00 (paper-bound).

John Rawls' *A Theory of Justice* (Clarendon Press: Oxford, 1972), though only published in 1972, is already generally recognized as a book whose influence on future debates in moral and political philosophy will be permanent. It is a book which is of great importance to lawyers, for justice is an ethical concept of particular relevance to the law. It is, however, a book which is long (about 280,000 words)

and extremely difficult reading for anyone other than a trained philosopher. For lawyers interested enough in the subject to want to come to grips with the thinking of Rawls, Brian Barry's book provides a first rate introduction. It is well written, short (about 70,000 words), and, while not an easy book to read, it is far less formidable than Rawls' book itself.

Chapters one and five give a brief account of the central features of Rawls' theory. Rawls' basic argument is that the way to arrive at a concept of justice is to imagine a hypothetical situation in which rational persons come together to determine the manner in which rights and duties, advantages and disadvantages, should be distributed in society. The persons taking part in the debate would not, however, know certain things about themselves. They would not know the social position they would occupy in the society, nor would they know what abilities they would possess, what things would give them pleasure, what their ambitions would be, or what religious or other beliefs they would hold. These limitations on knowledge Rawls refers to as a "veil of ignorance". Rational persons, debating the manner in which society should be governed from behind a veil of ignorance would, Rawls argues, be likely to agree on two principles.

> "*First Principle.* Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all. *Second Principle.* Social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged . . ., and (b) attached to offices and positions open to all under the conditions of fair equality of opportunity." (Barry, p. 9; Rawls, p. 302)

These two rules constitute the principles of justice. Insofar as an actual society is governed in accordance with these principles it is a just society. Insofar as the principles are departed from the society is an unjust one.

Chapters six to eleven of Barry's book contain an elaborate criticism of Rawls' basic theory. Rawls' book also extends to a consideration of the political and economic implications of his theory. In chapters twelve to fifteen Barry examines and criticises these features of Rawls' theory. Although Barry sets out to attack Rawls' theory, and does so strongly, he is always scrupulously fair in carefully explaining Rawls' position before leaping to the attack.

This book is recommended for anyone interested in the concept of justice and in coming to grips with the thought of one of the major philosophers of our time. It is an excellent exposition of Rawls' work, and the criticisms of Rawls are forceful and provocative. It is recommended, however, that the reader not stop with Barry's book, but move on from it to Rawls' *A Theory of Justice.*

C. R. WILLIAMS

Cases and Materials in Industrial Law, by H. J. GLASBEEK AND E. M. EGGLESTON, (Butterworths, Sydney, 1973), pp. xxiv and 590. $22.50 (hard-bound) and $16.10 (paper-bound).

In his foreword to this book, Mr Justice Kerr, after stressing the increasing importance of Industrial Law in our community, makes the point that this field of law is also one close to the political and economic struggles in our society and one in which social and legal reform is constantly discussed. He stresses the importance of inter-disciplinary studies in this area. Of this book he rightly says that it "opens up the wider field for thought and attention". One of the concerns of the authors, as expressed in their preface, is to raise 'ought' questions. This the book does admirably and is its greatest virtue.

The book is primarily meant, in the authors' own words, as a 'teaching tool' to be used in conjunction with Sykes and Glasbeek's *Labour Law in Australia.* Considered as such, the two books together will provide students with a very good

introduction to conciliation and arbitration and workers' compensation which they both cover. Perhaps the Case Book's most pleasing feature as a teaching aid is that, by leaving questions unanswered, with clues as to where the answers may be obtained, it forces students to look at materials other than those which appear in the book. This will make students read more widely than they otherwise might. For this very reason, however, the book will be of less use to practitioners in spite of the hopes expressed by the authors in their preface. The practitioner wants answers. However, it is as a "teaching tool" that the book must be judged, and as such it is a success.

The authors state in their preface that the book has three aims:

(i) to ensure that there is sufficient basic information for every reader to understand how the various systems, mechanisms and schemes work.

Used in conjunction with Sykes and Glasbeek, this aim is fulfilled. A comprehensive account of both the conciliation and arbitration system and the basic principles of workers' compensation, (the details of the various State Acts being left, understandably, to other sources), will be found by using both the materials in this book and in Sykes and Glasbeek.

(ii) to raise questions about doubtful areas of operation of these systems, mechanisms and schemes.

This is one of the pleasing features of the book. It is surely one of the most important tasks in teaching law students to have them look at the law critically. Does the law work? Can it be made to work better? What should be its aims? Perhaps the most striking example of these doubtful areas provided in the book is that of the Tramway dispute culminating in the "Clarrie O'Shea" affair. This affair led to widespread industrial disturbances and to a virtual revolt against the arbitration system. The role of the High Court, with its insistence on "legalism", (to use the authors' words) was, in their opinion, very harmful. The authors assert that "the insistence on technical compliance with legal requirements must be of dubious merit when it is weighed against what must be one of the aims of the s. 51(xxxv) machinery: good industrial relations", (p. 87) It matters little whether the authors are right in this context, the important thing is that students should be made to think about the role of our institutions so that they may continue to develop, grow, change and even cease to exist in accordance with community needs. This the book does admirably.

(iii) to raise "ought" questions about the policies on which these systems, mechanisms and schemes rest.

For similar reasons to (ii) above, this is also a very good aspect of the book. The best example comes, perhaps, in the final chapter of the book where it is asked whether a National Insurance scheme should replace workers' compensation. Why should only "workers" be protected? Again the merits of the proposal are not important in this context. What is important is that students will be made to think about these issues.

There are one or two statements in the book which may be questioned. For example, the authors' apparent doubts as to the value of the principles of natural justice in trade union affairs (p. 334-5) is rather surprising. Surely where a man's livelihood is at stake, which is often the case in these matters, natural justice is essential. Also, at pp. 98-99, the authors appear to confuse law and morality in discussing the right to strike. Simply because the law proscribes strikes does not, as the authors assert, establish that there is not a right to strike. The unions claim a moral right to strike and with this question the state of the law has nothing to do. However, these are minor defects when set in the context of the book's overall virtues.

Finally, one aspect which troubles the reviewer is the high price of the book. Even using the Limp version, together with Sykes and Glasbeek, with which it will often be used, there is a total outlay for the student of $34. This is far too much. There is no reason why law books cannot be produced in paperback series. This would lower the outlay considerably. As law books, particularly in this field, date very quickly and are revised frequently, questions of durability do not seem to be very important. This criticism, of course, is directed at the publisher not the authors.

Overall, the book, used in conjunction with Sykes and Glasbeek, will be a very useful teaching tool indeed, having the abiding virtue of not only providing basic legal information but of making students think critically about the law and about wider social issues.

SPEAROS RAFTOPOULOS

Industrial Law in Victoria, by STEPHEN G. ALLEY, (Butterworths, Sydney, 1973), pp. xxii and 340.

Mr Alley's work on *Industrial Law in Victoria* is the 6th volume of Butterworths' comprehensive series on Australian Industrial Law. The book is fairly short (some 360 pages *in toto*) and is very well produced. It will be kept up to date by a Supplement Service which will contain cross references to the main text. The First Supplement is already available and is 18 pages in length.

Not all the Victorian industrial laws are included. In fact the book is confined to the most important Victorian statute—the Labour and Industry Act 1958. It is essentially an annotation to that Act but the many regulations made thereunder are also reproduced. One might regret that other Victorian industrial laws are not considered. The author justifies the omission of the Trade Unions Act 1958 because it "is largely obsolete as there are few bodies which are registered in accordance with its provisions". (p. xx) But that Act is not confined to registered trade unions and the provisions raise interesting problems of legal personality. This, however, points out the practical and non-academic nature of the work. Another omission is the absence of any consideration of the criminal and civil liability relating to strikes and other direct action. This involves not only an examination of the common law but of statutory modifications contained in the Employers and Employés Act 1958 and the Essential Services Act 1958.

The consideration of the Labour and Industry Act is reasonably comprehensive and is clear and concise. But even here there are some omissions. The territorial limitations of the statute and determinations made under it are discussed (pp. 10, 38) but the limitations arising through the existence of inconsistent Commonwealth Awards are not really investigated. In short the book is far from a comprehensive statement of Victorian industrial laws. But in reproducing the important Labour and Industry Act and associated regulations and in containing accurate annotations thereto it has its place and will prove useful to practitioners.

MICHAEL PRYLES

Insider Trading in Israel and England, by AARON YORAN, (The Institute for Legislative Research and Comparative Law of the Hebrew University in co-operation with the Israel Law Review Association, Jerusalem, 1972), pp. 148.

This is a comprehensive treatment of the situation which arises when a director of a company or other person who has access to its confidential information buys or sells securities advantageously on the strength of it. The author discusses the situation from the point of view of the general effect that this type of transaction has on the working of the securities market as well as analyzing the various approaches which may be available to provide personal remedies for its victims.

Chapters IV, VI, VII, VIII, IX, X and XI deal with the systems of securities regulation in the U.S.A., Israel, and England and the relevant personal remedies which the specific regulations provide, or have been or may be stretched to provide. These chapters are well worth reading for their lucid exposition of the strengths and weaknesses of systems of securities regulation which differ markedly from that of Australia. The analysis of possible civil claims, based on penal legislation, for damages, rescission, restitution or injunction, and defences based on illegality are stimulating and thought-provoking. As well, some of the arguments, although novel in Australia, may ultimately become accepted in Australian Courts. As, however, a great deal of these chapters is given over to a careful dissection of specific provisions which lack local counterparts, Australian readers may wish to spend more time on Chapters I, II, III and V which deal with the common law. In this respect, as Professor Loss of Harvard University points out in his foreword, the author is unduly modest in his choice of title. The cases which these chapters treat are as persuasive in Australia as in England or Israel. Chapter II points out the fallacy in the conventional wisdom surrounding the maligned decision of Swinfen-Eady J. in *Percival* v. *Wright* [1902] 2 Ch. 421. Mr Yoran argues convincingly that it need not be treated as laying down in unqualified terms the rule that directors owe no fiduciary duty to individuals with whom they treat in securities dealings. The decision is easily distinguishable, not only on the basis that the information withheld was not material but on the ground as well that the directors had not taken the initiative, a fact which his Lordship expressly treated as significant. Furthermore, counsel for the plaintiff conceded that shareholders impliedly release directors from duty of disclosure and based his argument on a supposed exception to that rule in the case of information concerning negotiations for sale of the entire undertaking. This extraordinary concession certainly exposes *Percival* v. *Wright* to Mr Yoran's comment that it is an example of a bad argument making bad law. The discussion in Chapter V of the impact of the rule in *Foss* v. *Harbottle* (1843) 2 Hare 461 on the use of the derivative action as a remedy for unjust enrichment and for its deterrent effect is particularly apt.

Mr Yoran devotes his final chapter to the case for law reform. After dismissing the arguments put forward by some economists that insider trader is socially valuable because it provides an incentive to entrepreneurs and thus ensures optimum allocation of capital as well as tending to even out the market, he concludes that the practice needs to be regulated and that civil remedies are desirable. In the latter regard, he rejects the suggestion that remedies should be created expressly by legislation, partly on the ground of the difficulty in drawing provisions which reach far enough but not too far and partly because he lacks confidence that any enactment is likely to be forthcoming. His suggestion is that the judges should make the rules by cautious extension of the action on the statute.

D. G. DOANE

Two Million Unnecessary Arrests: Removing a Social Service Concern from the Criminal Justice System, by R. T. NIMMER, (The American Bar Foundation, Chicago, 1971), pp. vii and 202. US$5.00 (hard-bound) and US$3.50 (paper-bound).

Periodically since the mid-nineteenth century the personal tragedy and the abject poverty of the public inebriate has moved the collective conscience of western industrialized nations into taking corrective action. But, despite much soul-searching, inquiry, and debate, the measure adopted with almost monotonous regularity up to the beginning of the last decade has been the criminal law or similar measures involving the involuntary incarceration of these persons for short periods of time.

The futility of this response has always been manifest from the excessive level of recidivism and the continued existence of the problem unabated. Until recently this discredited policy was perpetuated on the grounds that it was better than nothing and cheaper (and no less effective) than the alternative measures. During the early sixties a number of American academics and various government reports began to challenge these propositions and advocate more humane measures for coping with the problems. Nimmer's study of the operation of the public drunkennes provisions in Chicago and New York compared with the non-penal programmes adopted in St. Louis, Washington and the Manhattan Bowery marks the peak of this wave of interest in finding new solutions for this persistent problem. Nimmer concedes that public drunknenness will always be accorded a low social priority but argues that the criminal justice reponse is not only more expensive than other alternatives but also fails to confer any real benefits on the recipients.

For the specialist on the problems of this addiction the study is now of limited importance. The descriptive material is available from more comprehensive sources; the arguments and recommendations are now the standard launching points for analysis and the study contributes little to the expanding body of sociological theory on the nature or aetiology of the addiction. Nor does the analysis explore the fascinating historical materials concerning the evolution of legislative policies in this area. These omissions will disappoint the specialist but they in no way detract from the value of this book outside this field. For, despite the specialized nature of the subject chosen for the study, it stands to be judged on its merits as a case study in the formulation (or re-formulation) of social policy. In this context Nimmer has few rivals. Within a commendably short compass Nimmer convincingly demonstrates that the substantive policy issue to be resolved in this, as in all other areas of welfare, concerns the level of social resources to be diverted to meet these needs. Basic questions of social priorities are all too often ignored in debates which set or review legislative welfare policies and Nimmer does us a service in arguing that they be properly articulated in future. The analysis also draws attention to two other common deficiencies in the work of law reform bodies and others actively concerned with policy issues: the tendency to oversimplify complex problems and to seek legislative panaceas without taking account of either the limited capacity of the law as a normative device—particularly in the face of administrative inertia and resistance—or adequately considering whether the unintended consequences of the legislation might not outweigh the intended benefits. These three insights are accepted as trite learning among sociologists. Unfortunately sociological insights are often most heavily deprecated by lawyers, the very profession which bears the greatest burden of responsibility for formulating, administering and reviewing legislative policies.

Neither the approach to drunkenness problems nor the approach to questions of law reform in Australia casts much credit on the institutional structures or the professional bodies responsible for these areas. The American Bar Foundation which commissioned this study advanced the cause of reform of drunkenness laws and at the same time acquired a blueprint for a more rational method of social planning. This document is to be highly commended to Australian lawyers interested in judicial administration, law reform or broad issues of social policy, particularly those who have not received any formal training in the techniques of the social sciences.

T. CARNEY

The Child Savers: The Invention of Delinquency, by ANTHONY M. PLATT, (University of Chicago Press, Chicago, 1972), pp. ix and 230. US$2.45 (paper-bound).

There seems to be a great pendulum effect in communal responses to children alleged to be delinquent. The swing seems to be in opposite directions in different

parts of the world. In the United States the great Supreme Court cases of *Gault*, *Kent* and *Winship* marked a move away from *parens patriae*, informality, and uncontrolled pursuit of the rehabilitative ideal, towards greater awareness of the need for increased protection of the legal rights of the young, particularly as it has become more apparent that the promise of solicitous care for young offenders goes largely unfulfilled. In England, on the other hand, under the Children & Young Persons Act 1969, the swing is away from legalism towards a Scandinavian welfare model with substantial responsibility being left in the hands of social welfare authorities whose primary task is, except in the most serious cases, to negotiate an informal disposition of the matter having, as ever, the needs and best interests of the child in mind.

It is hard to tell which way the pendulum swings in Australia. It is true that the recent establishment in South Australia of non-judicial youth panels designed to expedite pre-trial diversion of misbehaving youngsters away from court processing is suggestive of inquisitorial negotiated civil dispositions but, on the other hand, there are states like Victoria whose Children's Court legislation has always contained an affirmation that the child is entitled to some legal niceties at his trial. Practice in these Courts has, however, been consistent with the informal non-adversary model and defence counsel are seen there infrequently.

The recent United States cases emphasized that constitutional due-process guarantees entitled children to representation and, as a consequence, lawyers now appear more regularly in Juvenile or Children's Courts although there is much evidence to suggest that they suffer a great deal of uncertainty regarding their proper role and function in this specialized jurisdiction. It is predictable than in Australia, too, lawyers will be appearing more regularly in Children's Court, not as the result of any due process doctrine, but as a consequence of the establishment of government and privately supported legal aid services serving those who ordinarily would not be in a position to obtain legal representation. Despite these developments and notwithstanding Australia's claim to have established the world's first Children's Court in Adelaide (a claim constantly challenged by Chicago), remarkably little has been written on the development and changing functions of these courts in this country. Platt's book *The Child Savers* does not fill this void in Australian legal and criminological writing for it is concerned solely with the American scene, but the issue and themes it presents are no less relevant here.

Platt traces contemporary programmes of deliquency control to the enterprise of persons who, viewing themselves as altruists and humanitarians dedicated to rescuing those who were less fortunately placed in the social order, helped to create special judicial and correctional institutions for processing, managing and labelling "troublesome" youth as delinquents. Traditional explanations of the child saving movement in the 19th century emphasise the noble sentiments and tireless energy of middle class philanthropists and it is widely implied in the literature that the juvenile court represented a progressive effort by concerned reformers to alleviate the misery of urban life and to solve social problems by rational, enlightened scientific methods. The concern of these reformers with the "purity", "salvation", "innocence", "corruption", and "protection" of youth reflected, however, an unshakeable, almost divine, belief in the righteousness of their mission and Platt explores the relationship between the reforms sought by these "child savers" and subsequent changes in the administration of criminal justice. He examines particularly the motives, class interests, aspirations and purposes of the child saving organizations and the discrepancies which soon developed between their idealized goals and the enforced conditions, and diminution of civil liberties, which the implementation of the moral crusades against deinquency brought about. If, as the child savers believed (following Lombroso and social Darwinism), criminals were conditioned by biological heritage and urban corruption, then prophylactic measures had to be taken early in life. It was particularly through indeterminate detention in a reformatory that it was hoped to be able to demonstrate that delinquents were capable of being saved. The reformatory plan called for "delinquents" to be assigned to correctional institutions without trial and with minimal legal requirements, sentences to be indeterminate so

that inmates would be encouraged to cooperate in their own reform and also so as to isolate persistent offenders, delinquents to be protected from "idleness, indulgence and luxuries" through military drill, physical exercise and constant supervision, and the buildings themselves to be located in rural settings so that agricultural training should predominate. These correctional programmes, then as now, had their most direct consequences on the children of the urban poor. The fact that troublesome adolescents were depicted as "sick", were detained "for their own welfare" and were dealt with by non-criminal processes did not (and still does not) alter the child's subjective experience of the process as being punitive and coercive. Platt contends that the child saving movement went beyond mere instrumental reforms in the social control of youth: it was also a symbolic movement defending the sanctity of fundamental institutions—"the nuclear family, the agricultural community, Protestant nativism, women's domesticity, parental discipline and the assimilation of migrants".

The efforts of the child savers in the United States culminated in the establishment of the new institution of the Juvenile Court in 1899. This court emphasized personalized administration of juvenile justice and formally removed many aspects of due process which attached to the criminal law, by approaching troublesome youth in medical-therapeutic terms within the framework of civil law. Platt details how the flexibility and informality of these proceedings later came under attack from both moralists and constitutionalists: the former concerned that judicial informality would encourage disrespect for law and negate the ritual functions of public trials and the latter claiming that the juvenile courts inflicted punishment without fair trial. The constitutionalist challenges have prevailed but, according to Platt, the courts and the community have a long way to go before they truly discern the objective reality behind the rhetoric of juvenile justice. Child saving and delinquency prevention schemes are, in his view, not derived from an effort to liberate and dignify youth, but reflect an idealistic but punitively intrusive effort to control the lives of lower class adolescents and to maintain their dependent status.

This book is a succinctly written, provocative exercise in demythologizing the benign character of both the child saving movement and its institutional expression, the juvenile court. It is well worth reading.

RICHARD G. FOX

Contemporary Punishment: Views, Explanations, and Justifications, edited by R. J. GERBER AND P. D. MCANANY, (University of Notre Dame Press, Notre Dame, Indiana, 1972), pp. viii and 267. US$15.00 (hard-bound) and US$5.95 (paper-bound).

Almost everyone claims a degree of expertise in punishment. We have all had experiences, both as victims and practitioners, of this uniquely human activity—the deliberate infliction of suffering and moral condemnation upon another, ostensibly for beneficent purposes. Though parents and teachers have been practising the art of punishment throughout human history, the large scale punitive monopolies have always been the prerogative of the Church and State and, in these enterprises, theologians and lawyers have been assisted by philosophers and jurists who have generously provided justificatory theories, explanations and rationalizations for the exercise of punitive force by one communal group over another. Today the theorists are joined by psychiatrists, psychologists, sociologists, and other behavioural scientists who have substantial contributions to make towards an appreciation of punishment as an operational phenomenon whose previous theoretical formulations and explanations need to be recast in the light of experimental and other empirical studies into its nature and effects. The editors of this work have, however, set their task in the lawyer's mould and have confined their arrangement of material within the classical

distinctions thought to exist between retribution, deterrence, rehabilitation, and incapacitation. They take as their theme the justification of punishment in the criminal law and largely ignore the punitive aspects of civil "mental health" dispositions or other pre-trial "diversions" from the criminal process, e.g., to drug treatment centres, detoxification units, or hostels for vagrants and other disaffiliated persons.

As is the current fashion in the creation of instant books, they have gathered together and edited some 30 pieces of writing published elsewhere at various times and places, categorized them into parts and chapters, added a number of brief introductory statements and bound the entire exercise under an eye-catching title and cover. Nevertheless, the reprinted material, considered separately from the editorial additions, leaves an overriding impression of wide ranging high quality writing. And well it should, for the editors have brought together, in subtle interplay, the writings of such diverse commentators as Mark Ancel, Frances Allen, Egon Bittner, Jerome Hall, Hans Eysenk, H. M. and H. L. A. Hart, Gordon Hawkins, C. S. Lewis, Norval Morris, Walter Moberly, Karl Menninger, Herbert Packer, Leon Radzinowicz, Shlomo Shoham, Barbara Wootten, Nigel Walker and others of like standing. Even Pope Pius XII is represented, surprisingly, in his capacity as a lawyer. All positions are thus offered-from "hard-nosed" natural law vengeance to "bleeding-heart" moral-educative rehabilitation.

The collection is strong in legal, philosophical and linguistic analysis, but weaker on analysis of empirical research findings, particularly those of psychologists such as Hull and Skinner whose findings strongly indicate that punishment (as understood in the form of aversive conditioning) is far less efficient as a form of extinction of unwanted behaviour than methods of conditioning involving positive reinforcement of desired behaviour. Similarly the work of Zimring on the factors that condition the effectiveness of legal threats, the specificity of findings of research into deterrence, and the communication gap which exists between the level of information available about the effects of legal threats and official beliefs, is, regrettably, absent from this collection. Nevertheless, for their efforts and skill in searching out and bringing together material that has both quality, diversity and readability, the editors properly deserve praise. The literature on punishment is so extensive that the fact that the task could have been undertaken in a different manner, with other selections, is neither here nor there. Those who seek a more psychologically oriented collection of materials on the topic must simply look elsewhere, for example, to the recently published Penguin *Punishment* edited by Walters, Cheyne and Banks (1972).

The editorial introduction and comments are brief, totalling 22 of the 267 pages of the book and add little of value. Though they provide concise signposting to the material and raise various rhetorical questions, nothing original is offered by way of analysis or synthesis. The book suffers from the absence of an index and it seems, perhaps, that the editorial comments were designed simply to serve this function. At best, they look like the fence-sitting generalizations of socratic-method law teachers. For example, the editors' introduction concludes:

> "It is the balance of values between the good of the individual and that of the community which should characterize the means of securing an ordered society" (p. 6)

and their comments on the final part, "seeking a unity for punishment theories", end with similar trivia:

> ". . . retribution needs to be complemented by social-minded, forward-looking theories of punishment . . . The relationship between retribution and these other rationales is both complex and intriguing, as seen in the following selections." (p. 232)

This book serves to introduce undergraduate students to the writings of some of the leading writers on punishment—no more and no less. It might be usefully utilized by a jurisprudence or legal philosophy seminar class concentrating on this topic, but, in that event, it would be worth purchasing only at the soft-cover price.

RICHARD G. FOX

Delinquency in a Birth Cohort, by MARVIN E. WOLFGANG, ROBERT M. FIGLIO AND THORSTEN SELLIN, (University of Chicago Press, Chicago, 1972), pp. x and 326. US$12.50.

This is the first volume in a new monograph series *Studies in Crime and Justice* emanating from the University of Chicago Press. It comprises a report of research on a cohort of nearly 10,000 boys born in 1945 who lived in Philadelphia from their 10th to their 18th birthdays. The study is remarkable, not only for the size of its sample but, unlike the more common prospective or retrospective studies of groups of offenders with or without their matched "non-offender" controls, this is an analysis of delinquency in a cohort which was initially defined other than by reference to contacts with any part of the criminal justice system. The researchers follow the youths in the cohort through all available official data, *i.e.*, school, military service, police, court, and correctional agency records. Of the 10,000 youngsters in the cohort, 65 per cent had no recorded police contact; the remainder constituted the "delinquents" of the study.

Much of the work concentrates on the interrelationships between measures of age, intelligence, socio-economic status, race, school achievement, residential and school mobility and delinquency and the analyses are probably too technical for a legal audience without special interest or expertise in this field. As is commonly found in tightly written pieces of empirical research in the social sciences, the writers are hesitant to allow themselves the liberty of broad theory or practical recommendations in their concluding chapters. Perhaps the major findings are little more than confirmation of common views regarding juvenile offenders. Thus, the researchers found that about half the juveniles who committed an offence were likely to commit a second, and that after second offences there is even less likelihood that the child will desist from repeated criminality. They also observed that the product of the juveniles' encounters with sanctioning authorities was far from desirable, particularly in relation to repeated offenders: not only do a greater number of those who receive punitive treatment (institutionalization, fine, or probation) continue to violate the law, but they also commit more serious crimes with greater rapidity than those who experience a less constraining contact with the judicial and correctional systems. The researchers also noted the tendency of delinquency control agencies to deal more severely with black youths than with white. Overall the study offers the damaging indictment that the juvenile justice system, at its best, has no effect on the subsequent criminal behaviour of adolescent boys and, at its worst, a positively deleterious impact.

Because 46 per cent of the delinquents in the study were found not to persist with a criminal career after their first offence, the researchers suggested that major and expensive treatment programmes or other interventions in a delinquent boy's career at that point of time would appear to be wasteful. They go so far as to argue that intervention be held in abeyance until the commission of the third offence for, on their data, an additional 35 per cent of second-time offenders desist from then on. On their sample of almost 10,000 cases in the birth cohort, the number of boys requiring attention reduces from 3,475 after the first offence to 1,862 after the second offence, and further, to 1,212 after the third. They recommend applying resources to this last group rather than concentrating on all in the cohort or a possibly larger sub-group such as non-whites or lower socio-economic status boys under some type of blanket community programme. This is the material of which cost-benefit analyses of the criminal justice system are made, but whether or not community programmes "work" (however the criteria of success is defined) is, of course, another matter. Ironically, the research results reported in this book, suggest only *when* intervention should take place not *how*. The outstanding problem of what form delinquency prevention programmes should take remains unresolved.

RICHARD G. FOX

Studies in Canadian Family Law, edited by D. MENDES DA COSTA, (Butterworth & Co. (Canada) Ltd., Toronto, 1972), 2 Volumes, pp. x and 1104.

Canada is a country of peculiar interest to Australian family lawyers because of the Federal/Provincial dichotomy of jurisdiction which is similar to, though not identical with, that which obtains here.

It is also a country of unusual interest to comparative family lawyers because it is one of the few countries which has within it both a civil law and a common law jurisdiction.

It is unfortunate that Canadian family law is not well known in this country. Possibly this is because it has not been the subject of particularly good treatment in treatises. It is therefore a great pleasure to be able to give a favourable reception to this collection of essays.

In this book, to which fifteen Canadian lawyers have contributed, there is much difference in quality and style. The two chapters written by the editor, on "Divorce" and "Conflict of Laws", are especially valuable. The Federal Divorce Act of 1967-8 contains many similarities to, but also several striking differences from, the Australian Matrimonial Causes Act. Comparison of these differences is fruitful. It is also interesting to compare the attitude of Canadian courts to basically similar legislative provisions. Especially notable are the more vigorous attempts by the courts to police the reconciliation provisions of the Act, which have been the subject of several decisions, noted here by Professor Mendes da Costa.

It is pleasing to note that in a number of essays, Australian decisions are generously cited. While the general feeling of most of the authors would seem to be that Canada "has much to learn" from Australia, there is nevertheless much in these essays that will give a new perspective to Australian readers. Of particular interest is the system of courts administering Family Law. When we are considering alternatives to the present scheme of things, it is valuable to compare a common law jurisdiction where Family Courts have a lengthy history. It may, however, come as something of a shock to read the first essay, an account of Family Courts in certain Canadian provinces, written by Judge H. A. Allard, the judge of the Juvenile and Family Courts of Alberta. Far from being an exercise in self-congratulation, this essay highlights the weak points of Family Courts. The author expresses concern that due process is not being observed in the informal atmosphere of some courts. This sceptical essay points to a number of difficulties which those of us who advocate Family Courts in Australia would do well to consider.

Although some of these essays concentrate on Canadian municipal problems, there is still a good proportion of the book which is highly relevant to family lawyers of other common law jurisdictions. Family property, for instance, is dealt with in two essays. The first, by M. C. Cullity, contains a persuasive analysis of *Pettitt* v. *Pettitt* and *Gissing* v. *Gissing*, which is manifestly relevant to all common law jurisdictions where these two House of Lords decisions carry weight. At the same time, this essay contains an excellent account of the most interesting homestead and dower Acts of various provinces. Another compelling essay, by J. E. C. Brierley, includes a comprehensive account of the community regime prevailing in the province of Quebec. Vigorous advocates of community property should note the author's discontent with certain aspects of the Quebec system. He criticizes both the sordid and unromantic pre-marital bargaining and the tendency to opt out of the legal regime in favour of *separate* property. At any rate, between them, these two chapters canvass almost all the realistic possibilities of regulating family property.

It is perhaps odious to single certain essays from the many meritorious ones, but one essay, H. A. Hubbard's "Res Judicata in Matrimonial Causes", is the most careful treatment of this difficult subject that I have read.

I have perhaps two criticisms of this book. First, each essay is a separate entity, and occasionally one finds the same subject matter doubly treated. This is especially noticeable in the essays on "Divorce" and "Evidence and Proof in Proceedings for

Divorce". In itself, this is not terribly serious, but it is perhaps unfortunate that there is not one cross-reference to another essay in the whole book. Ideally, one might have wished for an editorial piecing together, perhaps in the form of a final conspectus.

The other criticism is this. This book was published in late 1972. It is being reviewed in 1974. Yet it is obvious that all these essays were written no later than 1970.

A lot of water has flowed down the Saint Lawrence since 1970. If the purpose of this review is to enable the uncommitted to decide whether to buy it, the reader should be warned that he will be paying for a middle-aged book. Nevertheless, he will be buying very important comparative materials.

J. NEVILLE TURNER

Studies in Canadian Criminal Evidence, edited by R. E. SALHANY AND R. J. CARTER, (Butterworth & Co. (Canada) Ltd., Toronto, 1972), pp. viii and 393.

This is the fourth volume of the important Canadian Legal Studies Series. Like its predecessors it does not attempt a comprehensive exposition of a particular branch of the law. Its more modest but very useful aim is to focus attention on selected topics within one general theme. The topics here are problem areas of criminal evidence.

The editors, both members of the Ontario Bar, have between them contributed three studies and have included eight others from "knowledgeable persons", all of whom are Canadian judges or practitioners. This, no doubt, accounts for the practical flavour of the book. It tends to be descriptive rather than analytical and includes generous references to evidentiary and related procedural problems which, although they crop up fairly often in court, generally receive rather cursory treatment in more theoretical texts. There are, for instance, valuable discussions on the *voir dire*, identification evidence and the use of psychiatric evidence to impugn the credibility of witnesses.

The practical emphasis in these studies does not in any way reduce their academic merit. Indeed most of them are comprehensive, intellectually rigorous, and perceptive. Three notable examples are Judge Graburn's "Burdens of Proof and Presumptions", the study by Dr Malony and Mr Tomlinson entitled "Opinion Evidence", and Mr Justice Branca's exhaustive study on "Corroboration". However, it must be said that, as often happens in a work written by various hands, the quality of workmanship is uneven and some contributors do not achieve the standards attained in these three essays. They generally prefer to allow the cases to speak for themselves. They quote local judgments very extensively and the resulting exposition tends to be repetitive and confusing. Less quotation and more analysis of principle would have been appropriate in essays which purport to be "Studies" in criminal evidence.

The book is, of course, written primarily for Canadian readers and the emphasis throughout is on Canadian case law and legislation. However, most of the authors have adopted a comparative approach and have drawn freely from the law reports and journal literature of other common law jurisdictions, especially England and occasionally Australia. The result is a publication which both as a convenient source of Canadian material and as a valuable discussion of key issues in criminal evidence should be well received in this country.

R. S. O'REGAN

The Archer-Shees Against the Admiralty: The Story Behind the Winslow Boy, by RODNEY M. BENNETT, (Robert Hale, London, 1973). £2.50 (hard-bound).

Dramatic portrayals of famous criminal trials whether in films, plays, or novels never cease to fascinate. While the author or dramatist of a fictional trial may be utterly discriminating in his choice of events which lead up to the trial and in his selection of court room scenes, the author who embarks on an account of an actual trial is not in such a privileged position. He has to describe a set of events having unity and progression which faithfully reflect the essential legal procedures, both in and out of court. Such an undertaking is also imperilled by the use of "legalese" which may be unintelligible to the layman or by explanations of legal terminology that would bore lawyers. Rodney Bennett has not fallen into either trap in his portrayal of the story behind the Winslow Boy. As the author indicates in the Preface, Sir Terence Rattigan's well known play and film, "The Winslow Boy" is based largely on an actual case concerning George Archer-Shee and the Admiralty. Though Rattigan's play was inspired by the Archer-Shee case, the characters in it are largely drawn from the playwright's imagination and the facts altered to suit dramatic needs. Bennett did not need to resort to any alteration of the facts to maintain tension and the reader's interest in his book.

The historical and political setting of the trial of George Archer-Shee is carefully described as well as the public controversy which surrounded the navy at the time. The expulsion in 1908 of George Archer-Shee, a 13 year old cadet from Osborne Naval College, for allegedly forging and stealing a five shillings postal order was to provoke a most unusual legal and political battle.

Archer-Shee's family steadfastly believed in his innocence and engaged Sir Edward Carson to clear his name. Carson narrowed the Admiralty's case against Archer-Shee to two points: a handwriting report by an expert witness, which indicated that Archer-Shee had forged the signature on the postal order, and, a statement by the Postmistress that the cadet who cashed the five shillings postal order had also bought a fifteen shillings and sixpence postal order. Archer-Shee had in fact bought such an order, but it was subsequently shown that the Postmistress was mistaken in linking the two transactions, and the expert witness was largely discredited. An enquiry was held into the theft by the Commander of the College and later another enquiry was conducted by the Judge Advocate of the Fleet, Mr Reginald Ackland, K.C. Archer-Shee was denied representation at this enquiry. Ackland concluded in his report to the Admiralty that Archer-Shee was the person responsible and, as far as the Admiralty was concerned, that ended the matter.

As the author shows, clearing Archer-Shee's name proved no easy matter. The Director of Public Prosecutions was not interested in bringing a criminal prosecution, and on the basis of Crown immunity from suit, Archer-Shee, either as a civil servant or an officer in the armed forces, could not sue the Admiralty for wrongful dismissal. Recourse was made to the unusual legal procedure of "Petition of Right", which at the time was the only exception to the rule of Crown immunity from suit for breaches of contract, and then only after the Crown itself gave permission for the Petition to be heard. Central to this Petition was the claim that the Admiralty was in breach of an agreement with Mr Archer-Shee to educate his son George for the Royal Navy. The Petition was sent to King Edward VII who endorsed it with the striking traditional formula "Let Right Be Done".

The forensic battles between the great opposing lawyers for each side, Sir Edward Carson and Sir Rufus Isaacs, are outlined in the book with skill and clarity. It required three separate court hearings and a thorough canvassing of all the evidence to clear Archer-Shee's name. A miscarriage of justice was clearly averted by the painstaking work of Archer-Shee's legal representatives. The Admiralty unreservedly conceded his innocence, but refused to offer any compensation. As a result of this case some of the naval procedures for dealing with investigation of charges against cadets were changed.

Apart from a few irritating asides in which the author indulges Mr Bennett has produced a fascinating account of the political and legal battles that were fought contemporaneously in the Archer-Shee case and which resulted in right being done.

One of the tragic ironies of this case is that Archer-Shee would probably have survived the First World War if he had stayed in the Navy. He enlisted in the army as a subaltern and was killed in the first battle of Ypres in the autumn of 1914.

ROBERT MILLER

The Lawyer, The Public, and Professional Responsibility, by F. RAYMOND MARKS, KIRK LESWIG AND BARBARA A. FORTINSKY, (American Bar Foundation, Chicago, 1972), pp. xii and 305. US$7.95 (hard-bound) and US$2.95 (paper-bound).

The stated aim of this book is to examine the current "public-interest" urges and actions within the legal profession in America and from the outset the authors are to be commended for the thorough and exhaustive study they have made, subject to the criticism that at times there is a tendency to dwell overmuch on outlining their aims and proposed scope of the study thereby interrupting the flow of their treatment of a particular point and projecting it to a later stage in their study.

The above criticism aside, the book is to be recommended to the Australian lawyer inasmuch as it introduces him to a concept and movement emerging among his colleagues in America, a movement involving a recognition of the fact that lawyers have a role to play in the community at large over and above traditional forms. To a certain extent, the Australian lawyer will be familiar with this movement as embodied and manifested in our legal referral centres run by university students and qualified practitioners after hours in our so-called under-privileged suburbs, and in particular, in the growing legal services offered to people of Aboriginal origin. *Pro bono publico*, "for the good of the public", is the Latin phraseology adopted by the authors to describe this trend to public awareness and activity.

Some difficulty may, however, be incurred by the Australian reader as a result of the authors' understandable use of American firms, cities and public interest matters as examples of the new public interest responses and the various ways in which they manifest themselves. One feels that greater insight to the progress of this movement and an assessment of the authors' findings could more readily be made when the reader is himself familiar with the examples referred to in this study. Of course, even the American lawyer would not be familiar with every firm or every public interest issue discussed, though nevertheless even general familiarity with the American scene would make this book and the points the authors have to make more compelling reading.

Although the Australian reader may have difficulty in identifying the examples used to illustrate the impact of the new movement he is nonetheless, and this is probably more important, familiar with the underlying concepts and with the problems of reconciling deliberate attempts to serve the public at large when the traditional lawyer's role has been one of serving the public interest simply by doing his daily job of representing only one side of a controversy.

Similarly, many of the modes suggested in this book for implementing this new participation in the community at large are already present in Australia, notably the "branch office". It may well be, therefore, that this book will provide the impetus for a parallel Australian study as to how the profession in Australia fares in discharging its public responsibilities.

The reader of this book will, hopefully, be led to a reappraisal of this traditional role and to the question, what are the public functions, duties and responsibilities of a lawyer and more basically, what is a lawyer? There is always room for self-examination and inasmuch as this book serves as a means of this type of analysis it is well worth the experience.

LEONIE SZABO

Chowles and Webster's South African Law of Trade Marks, Company Names and Trading Styles, 2nd edition by G. C. WEBSTER AND N. S. PAGE, (Butterworths, Durban, 1972), pp. xlii and 553.

This is a second edition of the standard South African text on Trade Marks and Names incorporating the important changes brought about in the South African law by the Trade Marks Act 1971 which amended the principal Act of 1963.

This edition contains some useful reference material for the Australian trade mark lawyer and there are references to some Australian cases. However, the result of the amendments made to the Trade Marks Act 1963 by the 1971 legislation is that the law in South Africa now differs in many substantial respects from the law in Australia under the Trade Marks Act 1955-1966. The 1963 Act was based substantially on the British Trade Marks Act 1938, which is also the model for much of the present law in Australia, but the 1971 Act has extended the application of the legislation to include trade marks used in relation to services and this has necessitated a number of important changes in the law in South Africa. The definition of use of a mark has also been widened to include audible reproduction and infringement has been re-defined.

The Australian lawyer must therefore use the work with care, taking full account of the different statutory law applicable in South Africa. The Australian lawyer is already faced with many difficulties in the application of the present law relating to trade marks. The Act is excessively complex, often badly drafted, and the only guidance through the maze has been the standard work of *Kerly's Law of Trade Marks and Trade Names*, itself an English text based on legislation which, as in the case of the South African law, differs substantially in many cases from the provisions of the Australian Act. For the Australian lawyer, therefore, the value of the work must lie in the assistance which it gives him in comprehending the nature and effect of the Australian Trade Mark law.

The presentation by the authors is clear and concise and the references to general principles of Trade Mark law will be of assistance to all who are working in this field. The discussion in Chapter III of the nature of a trade mark is of interest, particularly since the recent important decision in the G.E. *Trade Mark* case, referred to at pp. 20-21, in relation to the meaning of a "connection in the course of trade" between the goods and the registered proprietor of the mark and the inclusion in the statutory definition of the concept of "quality control". Many of the well known English cases are included in the material relating to distinctiveness and the registration of marks and these will be familiar to most readers of the book. Relevant Australian decisions are, however, not referred to, and the problems of Part B registration in Australia where the provisions differ from the relevant provisions in the British Act are not adverted to. The treatment in Chapter VI of those sections similar to sections 28 and 33(1) in the Australian Act, which refer to bars to registration and which have often presented difficulties, is comprehensive, but for the Australian lawyer an omission is the *Bali Brassiere* case which is of considerable significance particularly having regard to the wording of section 28 of the Australian Act and the decision of the House of Lords in the *General Electric* case.

The unregistered licensing of trade marks has always presented problems in trade mark law, and whether such licensing of a trade mark vitiated the trade mark on the grounds that public deception would result and that the trade mark would cease to be distinctive has been much debated. The change in attitude of the British courts in the *Bostich Trade Mark* and the *G.E. Trade Mark* case is indicated and a comparison made with relevant Canadian decisions (at pp. 170-173). The problems of the so-called "trade connection" doctrine are also adverted to and will be of interest to the Australian lawyer. There are a number of important Australian decisions relating to registered users and there is a brief reference to some of these decisions (p. 179), including *Heublein Inc.* v. *Continental Liqueurs Pty. Ltd.*

Owing to changes brought about by the 1971 Act in South Africa the material on Infringement in Chapter XIII must be used with care, but these changes are clearly outlined at pp. 195-199 and, subject to the reservations that such changes require to be made, the discussion of general principles has value for the Australian lawyer. In particular, the problem of the use of trade marks on genuine goods and the decision in *Champagne Heidseick* v. *Buxton* are referred to and the authors submit that that decision is based upon a sound principle, viz., that a trade mark should be treated as essentially a badge of origin unless there is express statutory provision to the contrary. The use of trade marks to control export and import of goods (see, e.g., section 103 of the Australian Trade Marks Act 1955-1966), and the question of the territoriality of trade marks, present many difficulties, and it is arguable that it should not be infringement to use a mark which is not deceptive as to origin although goods are imported by a parallel importer.

A disappointing feature of the book from the Australian point of view is the lack of any discussion of the important and fast developing area of law which has been termed "unfair competition". Passing off is treated separately and comprehensively with reference to such an important Australian decision as *Henderson* v. *Radio Corporation Pty. Ltd.* (pp. 308-310) but discussion of the wider ramifications of the action, as the authors point out, falls to be discussed in South Africa under the *lex Aquilia.*

J. C. LAHORE

OTHER BOOKS RECEIVED

N.B. Books which will be among those reviewed in the next issue of this journal are included in this list.

Commercial Law

LORD CHORLEY AND P. C. SMART, *Leading Cases in the Law of Banking* (3rd edition, Pitman, London, 1973).

H. A. J. FORD, *Company Law* (Butterworths, Sydney, 1974).

H. H. MASON AND J. S. O'HAIR, *Australian Company Law* (2nd edition, McGraw-Hill, Sydney, 1973).

J. A. SLATER, *Mercantile Law* (16th edition by Lord Chorley and O. C. Giles, Pitman, London, 1972).

K. SMITH AND D. J. KEENAN, *Essentials of Mercantile Law* (3rd edition, Pitman, London, 1973).

Contract

G. C. CHESHIRE AND C. H. S. FIFOOT, *The Law of Contract* (8th edition, Butterworths, London, 1972).

G. C. CHESHIRE AND C. H. S. FIFOOT, *The Law of Contract* 3rd Australian edition by J. G. Starke and P. F. P. Higgins, (Butterworths, Sydney, 1974).

Criminal Law and Criminology

L. R. KATZ, L. LITVIN AND R. BAMBERGER, *Justice is the Crime: Pre-trial Delay in Felony Cases* (Case Western Reserve University Press, Cleveland, Ohio, 1972).

R. T. NIMMER, *The Omnibus Hearing: An Experiment in Relieving Inefficiency, Unfairness and Judicial Delay* (American Bar Foundation, Chicago, Ill., 1972).

E. H. SUTHERLAND, *On Analysing Crime* (University of Chicago Press, Chicago, Ill., 1973).

VARIOUS AUTHORS, *Interpretation of Implied Consent Laws by the Courts* (Traffic Institute of Northwestern University, Evanston, Ill., 1972).

Foreign and Comparative Law

R. DAVID, *French Law* (Louisiana State University Press, Baton Rouge, La., 1972).

E. L. JOHNSON, *An Introduction to the Soviet Legal System* (Methuen, London, 1969).

C. J. MANN, *The Function of Judicial Decision in European Economic Integration* (Nijhoff, The Hague, 1972).

P. MERCIER, *Les Conflits des Civilisations et Droit International Privé: Polygamie et Répudiation* (Libraire Droz, Geneva, 1972).

P. M. STORM AND OTHERS, *Branches and Subsidiaries in the European Common Market* (Kluwer-Harrap, London, 1973).

L. SZAMEL, *Legal Problems of Socialist Public Administration* (Akademiai Kiado, Budapest, 1973).

J. R. WEGNER, *A Bibliography of Israel Law in English and other European Languages* (Institute for Legislative Research and Comparative Law, Jerusalem, 1972).

Industrial Law

C. L. CULLEN AND J. J. MACKEN, *An Outline of Industrial Law* (3rd edition, Law Book Co., Sydney, 1972).

International Law

G. HARASZTI, *Some Fundamental Problems of the Problems of the Law of Treaties* (Akademiai Kiado, Budapest, 1973).

International Trade and Investment

D. E. ALLAN, M. E. HISCOCK AND D. ROEBUCK, *Credit and Security in Singapore* (with K. L. Koh).

D. E. ALLAN, M. E. HISCOCK AND D. ROEBUCK, *Credit and Security in Japan* (with H. Tanikawa).

D. E. ALLAN, M. E. HISCOCK AND D. ROEBUCK, *Credit and Security in Korea* (with C. K. Yoon).

D. E. ALLAN, M. E. HISCOCK AND D. ROEBUCK, *Credit and Security in China* (with J. K. Loh).

(all published by University of Queensland Press, St Lucia, Qd., 1973).

Legal Aid

B. F. CHRISTENSEN, *Lawyers for People of Moderate Means* (American Bar Foundation, Chicago, Ill., 1970).

Legal Profession

E. ADAMS, *Courts and Computers* (American Judicature Society, Chicago, Ill., 1972).

J. R. PEDEN, *Professional Legal Education and Skills Training for Australian Lawyers* (Law Book Co., Sydney, 1972).

Practice

C. P. JACOBS, *The Practice of the County Court* (5th edition, by D. Graham, Law Book Co., Melbourne, 1972).

Private International Law

E. I. SYKES, *Australian Conflict of Laws* (Law Book Co., Sydney, 1972).
M. PRYLES AND P. HANKS, *Federal Conflict of Laws* (Butterworths, Sydney, 1974).

Public Law

W. G. FARR, L. LIEBMAN AND J. S. WOOD, *Decentralizing City Government* (Praeger, New York, N.Y., 1972).
L. HENKIN, *Foreign Policy and the Constitution* (Foundation Press, Mineola, N.Y., 1972).
C. HOWARD, *Australian Federal Constitutional Law* (2nd edition, Law Book Co., Sydney, 1972).
R. KONVITZ (EDITOR), *Bill of Rights Reader: Leading Constitutional Cases* (5th edition, Cornell University Press, Ithaca, N.Y., 1973).
P. H. LANE, *The Australian Federal System with United States Analogues* (Law Book Co., Sydney, 1972).
D. P. O'CONNELL AND A. RIORDAN, *Opinions on Imperial Constitutional Law* (Law Book Co., Sydney, 1971).

Torts

A. M. LINDEN, *Canadian Negligence Law* (Butterworths, Toronto, 1972).
H. LUNTZ, *Assessment of Damages for Personal Injury and Death* (Butterworths, Sydney, 1974).

Miscellaneous

F. BRESLER, *Scales of Justice* (Wiedenfeld and Nicolson, London, 1973).
R. CHAMBERLAIN, *The Stuart Affair* (Rigby, Adelaide, 1973).
R. L. DICK, *Legal Drafting* (Carswell, Toronto, 1972).
O. HOOD PHILLIPS, *Shakespeare and the Lawyers* (Methuen, London, 1972).
T. IRLICHT, *Assignments, Arrangements and Compositions* (Butterworths, Melbourne, 1972).
G. NETTHEIM, *Outlawed—Queensland's Aborigines and Islanders and the Rule of Law* (Australia & New Zealand Book Co., Artarmon, N.S.W., 1973).
K. SMITH AND D. J. KEENAN, *English Law* (4th edition, Pitman, London, 1973).