BOOK REVIEWS

THE LAW OF CRIMINAL CONSPIRACY, *by P Gillies* (Law Book Co, 1981) pp xviii, 215.

The writers of law books which are something more than a collection of cases and materials produce works which may be said to fall into three very general classes. The best is of the class of Bollinger, Montrachet and Grange, ranging from the reasoned development of the Great Idea based on a discussion of primary and secondary sources,[1] to the use of such material in the presentation of a rational program of reform.[2] The second class may be analogised to a range of wine presently possessing the potential to greatness; an Eileen Hardy, a Brown Brothers Muscat, and the superior run of Barossa whites. It tends to include the provision of a high quality account of the present law or speculation as to its future content, with a critical commentary pointing to avenues of further research, the resolution of difficult points of law, and/or the need for and content of possible reforms.[3] The group that remains is of course by far the largest, including fair to cheap and nasty flagons, fizzy alcoholic grape juice, and almost all Canadian wine. Some such texts are of more use than others, but all are variations on the quasi-bibliographical exercise, the unexplained organization of inferior versions of headnotes, which have principal merit in the convenience of a single package containing, with any luck, all relevant primary references, and usually some kind of orderly arrangement.[4] It is a mistake to judge one category by the standards appropriate to the others.

Mr Gillies has produced a text on the law of criminal conspiracy.[5] He disavows the presentation of any program of reform,[6] and the book lacks any conclusion at all, let alone the presentation of one or more Great Ideas. Instead he aims to state the doctrine of criminal conspiracy, and deal with the difficulties inherent in the present law.[7] In short, he has aimed at the higher reaches of the third class, and the purpose of this review is to discover whether he has produced a good cask or merely more rotgut red.

Crucial to such an enquiry is the answer to the question whether the law is accurately stated. It is an unfortunate fact that this book contains a number of errors, the most obvious being glaring errors of omission. For example, the requisite *actus reus* of the crime is a difficult and important issue. In looking to the section on *actus reus,* the reader will find that Gillies has contented himself with a brief transcription of the usual unhelpful axioms such as: "as soon as the agreement is formed, the crime is complete", and, "overt acts performed pursuant to the agreement

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1 The classic examples are Hall, *Principles of Criminal Law* (1947) and Fletcher, *Rethinking Criminal Law* (1978).

2 The work of some outstanding law reform bodies provides obvious examples. See, eg the Working Papers of the National Commission On Reform Of Federal Criminal Laws, (1970) 2 vols.

3 The most obvious example is Williams, *Criminal Law, The General Part* (2nd edn, 1961).

4 See, eg, in the area of drug law, Lydiate, *The Law Relating To The Misuse of Drugs* (1977) and McFarlane, *Drug Offences In Canada* (1979).

5 Gillies, *The Law of Criminal Conspiracy* (1981).

6 Ibid preface vii.

7 Ibid.

are not a part of the formal *actus reus*".[8] The reader will search in vain for mention of the difficult questions raised by such recent cases as *Sokoloski,*[9] *Atlantic Sugar,*[10] *Barnard*[11] and *Scott.*[12] There is no mention of these decisions at all.[13]

Issues related to the *actus reus* are often easily confused with those relating to *mens rea,* particularly in the context of a crime which has an *actus reus* defined principally, if not exclusively, in terms of the actor's mental processes. Moreover, it is arguable that the *actus reus/mens rea* distinction is theoretically indefensible anyway.[14] Hence, the reader may well have cause to hope that neglected *actus reus* issues will surface in a discussion of the required *mens rea* by virtue of the author's idiosyncratic classification process. In this particular text that is to some extent the case. There is a section dealing briefly with the distinction between negotiation and agreement, another section dealing with agreements to do the impossible, and a quite lengthy discussion of complex conspiracies included in the section dealing with the *mens rea* of conspiracy.[15] There is no point in an argument that any of these topics more properly belong to a discussion of the act of agreement beyond the point that the distinction observed by the author is principally useful in the context of the notion of relevance: the relationship of one basic issue to another in the teaching of undergraduates, and the relationship of intellectual concepts and policies in the development of a written thesis. There is no evidence that Gillies has thought about the appropriate traditional classification, nor about notions of relevance in either sense.

Thus, for some reason, the reader will find discussion of the intractable problem of impossibility in the midst of a discussion of the required *mens rea.* Gillies provides the reader with a brief account of *Nock*[16] to the effect that agreement to produce cocaine from specified substances which will not, under any circumstances, yield cocaine is no criminal offence, but an agreement to produce cocaine generally is a criminal offence even though, on the occasion in question, cocaine could not be produced. Then follows a brief account of *Harris*[17] to the effect that an agreement to produce amphetamines from basic material which may produce amphetamines, but by persons who do not possess the expertise to do so is a criminal offence. That is all.[18]

A more inadequate account of the law in this area is hard to imagine. Gillies' treatment of this issue provides an excellent example of two of the fundamental flaws in the book. First, his research and discussion with respect to purely conspiracy issues is superficial and inadequate. It may be relatively easy to understand why Gillies has not included

8 Ibid 13-14.
9 (1977) 33 CCC (2d) 496 (SCC).
10 (1980) 54 CCC (2d) 373 (SCC).
11 (1978) 70 Cr App R 28 (CA).
12 (1978) 68 Cr App R 164 (CA).
13 While the table of cases does not reveal that *Orton* [1922] VLR 469 has been discovered, in fact the case is referred to at p 15 n 8.
14 See, eg Howard, *Criminal Law* (4th edn, 1982) 9-10.
15 Gillies, 19-38. Gillies calls them "multi-object conspiracies", but he is really concerned with the scope of conspiracy *qua* the number of participants rather than the number of objectives of the agreement.
16 [1978] 2 All ER 654 (HL).
17 (1979) 69 Cr App R 122 (CA).
18 *Harris,* supra n 17 does not appear in the table of cases also.

mention of *Maxwell*[19] and *Green*[20], but there is also no reference to or discussion of the important decision in *Bennett.*[21] There is no attempt to explain or discuss the difference, if any, between *Nock* and *Harris* nor has Gillies seen that conspiracy to commit an objective not criminal but unlawful is arguably a conspiracy to commit a legal impossibility. Moreover, Gillies does not make the point, made by a House of Lords concerned with the consequences of its doctrine, that the rigour of the impossibility rule may be avoided by the careful formulation of the indictment. There appear to be two ways out for the prosecution. The first has attracted the most attention, principally because it is relevant also to the attempt charge, and it rests upon the allegation of intent.[22] In short, had the prosecution in *Nock* alleged and proved a general intention to produce cocaine, and a general agreement to do so, so that the particular incident was merely one effort in a contemplated series, then Messrs Nock and Alsford would have been convicted.[23] Second, Gillies fails to make the point that the crucial time for the assessment of the impossibility question begins with the formation of the agreement, so that, arguably, (a) if the object of the agreement is possible at the point of agreement but later becomes impossible, and (b) if the object of the agreement is impossible at the point of agreement, but later becomes possible, then, in either case, the accused may be convicted notwithstanding the impossibility.[24]

Coverage of conspiracy matters aside, the second major flaw of the work is that Gillies consistently fails to place his conspiracy material into the context of the surrounding general criminal law. Even in a text devoted to the crime of conspiracy, conspiracy doctrine cannot be an island unto itself and this is particularly so of the impossibility area in which the leading conspiracy case is resolved by the explicit incorporation of attempt doctrine into conspiracy law.[25] Whether or not that decision should — or will — be followed in Australia is itself a matter worthy of some attention.[26] Even accepting *Nock,* however, it passes any understanding how a section on the defence of impossibility can include no mention at all of *Haughton* v *Smith,*[27] and the discussion of that doctrine in *Collingridge.*[28]

The problem of requisite *mens rea* is an area in which it is crucial to interweave the specific conspiracy doctrine with an understanding of the surrounding general principles of criminal law. Similar weaknesses are apparent again in the text. The lack of any definition, or even a clear idiosyncratic idea of the meaning of the concept of intention has the result that Gillies' treatment of intention and purpose is turgid and

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19 [1980] SLT 241 (J).
20 (1976) 62 Cr App R 74 (CA).
21 (1979) 68 Cr App R 168 (CA).
22 Illustrated by a series of larceny cases: *Easom* [1971] 2 All ER 945 (CA); *Husseyn* (1977) 67 Cr App R 131 (CA); *Re Attorney General's References (Nos. 1 and 2 of 1979)* [1979] 3 All ER 143 (CA).
23 Supra n 16 at 656-657, 663.
24 The point is mace clearly by Lord Scarman in *Nock,* ibid, at 662-663 and is discussed briefly in *Benne t,* supra n 21.
25 *Nock,* supra n 6 at 656 per Lord Diplock.
26 See, eg, *Handshin* v *Lockyer* (1979) 84 LSJS 69 at 72, 73. If, as is implied by some of their Honours in *Collingridge* (1976) 16 SASR 117, the defence of impossibility rests upon the requirement of proximity, then *Nock* is clearly wrong.
27 [1975] AC 476.
28 (1976) 16 SASR 117.

opaque.[29] His formulation of the required *mens rea* is so unclear that it requires an annoyingly repetitive[30] and overbroad[31] footnote to the effect that the definition should not be taken to mean that ignorance of the law will provide a defence. The decisions in *Wald*[32] and *Soul*[33] do not, apparently, require mention and there is no mention of the possible distinction, proposed most clearly in *O'Brien,*[34] between an intention to make an agreement, and an intention to carry out the objectives of that agreement once made. Moreover, the defence of honest and reasonable mistake of fact is notable for its absence.[35]

Perhaps the most profoundly unsatisfactory aspect of the treatment of *mens rea* is Gillies' discussion of the concept of recklessness. In the first place, it is at no point clear what the author means by recklessness. In the second place, in asserting that recklessness will *not* suffice for conspiratorial *mens rea,* he contrasts "accessorial liability", stating that there recklessness will suffice, citing only his own book on the subject.[36] Depending upon what is meant by "accessorial liability", the question as to whether recklessness will suffice for complicity is a matter of controversy, but Gillies may, after all, be right. But if he is right, the reader is surely entitled to more than an opaque reference to his own text, and the point that the crime of attempt, to which the crime of conspiracy is usually analogised, insists upon intention to the exclusion of recklessness is clearly worthy of mention.[37] Moreover, the apparent *de facto* incorporation of recklessness concepts into such decisions as *Maxwell*[38] and *Miller*[39] without mention of recklessness as such may have provided a fruitful analogue for a discussion of conspiracy.[40] Instead, the reader is confronted with the simple assertion that recklessness does not

29 That the distinction, if any, between purpose and intention may have important consequences is given point by consideration of *Powell* (1875) 63 NY 88 and its progeny. See, for example, the brief account by Marcus, "Criminal Conspiracy: The State Of Mind Crime — Intent, Proving Intent, And Anti-Federal Intent" [1976] U Illinois LF 627, 634-636.

30 Gillies at 16 n 13; 43 n 129; 82 n 2; 89 n 21.

31 For argument that the *ignorantia juris* maxim may be overgeneral, see Ashworth, "Excusable Mistake of Law" [1974] Crim L R 652; *Lim Chin Aik* [1963] 1 All ER 223 (PC); *R* v *McLean* (1974) 17 CCC (2d) 84 (NSCoCt); *R* v *Catholique* (1979) 49 CCC (2d) 65 (NWTSC), and the oddly ambiguous *Molis* v *R* (1981) 55 CCC (2d) 558 (SCC). See also n 29.

32 (1971) 3 DCR (NSW) 25.

33 (1980) 70 Cr App R 295 (CA).

34 [1954] SCR 666. See, in the English context, *R* v *Thompson* (1965) 50 Cr App R 1 (Midland Circuit). The case is thought to be of sufficient importance to be one of the very few non-American decisions used in Kadish and Paulsen, *Criminal Law And Its Processes,* (2nd edn 1969). *O'Brien* is cited by Gillies at 17 n 18 but the distinction is not drawn by him. *R* v *O'Brien* (1974) 59 Cr App R 222 at 227 is utterly incorrect, but since Gillies does not make the point at all, he does not discuss the *dictum* in question.

35 Sometimes called the defence in *Proudman* v *Dayman* (1941) 67 CLR 536.

36 Gillies at 18, citing Gillies, *The Law of Criminal Complicity* (1980). Gillies cites Smith and Hogan, *Criminal Law* (4th edn, 1978) for the requirement of purpose rather than recklessness. Lanham (1981) 5 Crim L J 312, contends that this citation is somewhat misleading.

37 The leading case on point is *Mohan* [1976] QB 1 (CA).

38 [1978] 1 WLR 1350 (HL).

39 (1980) 32 ALR 321 (HC).

40 That is particularly so since the line of recent High Court cases has depended entirely upon interpretation of the notion of "common intention", a phrase of considerable analogical significance *qua* conspiracy. See, eg Howard, *Criminal Law* (4th edn 1982) 258-265.

suffice for conspiracy,[41] and there is in that assertion no discrimination between the possibilities *qua* agreement, objectives, or scope of the agreement. The dismissal of recklessness and that lack of discrimination contributes to a confused discussion of what are called "multi-object conspiracies".[42]

The reader should not be deceived, however, into thinking that the general discussion of *mens rea* issues is either comprehensive or final. Sixty pages later *mens rea* and recklessness surface again.[43] There is no reason provided to justify this example of a generally poor organization, but worse follows, for it is now concluded that recklessness *will* suffice for guilt.[44] This conclusion is buttressed by a lengthy footnote to the effect that recklessness is to be regarded as tantamount to intention in the general criminal law.[45] The inconsistency is not explained.

This extraordinary inconsistency apart, the unfortunate fact is that this book has been inadequately researched, and such doctrine as is presented has been inadequately integrated with the fabric of the surrounding criminal law. Moreover, even though Gillies does venture an opinion upon some matters of doctrine, seemingly at random, the book lacks any critical edge. One example may serve as well as another in this context, but perhaps the most obvious is Gillies' treatment of the rationales for the crime. His account is divided into two parts: "formal explanations" and "why conspiracy is really charged".[46] The former section deals with the usual theoretical justifications for the crime of conspiracy: the attempt justification and the social danger rationale. The latter section deals with the practical advantages of the conspiracy count which make it an attractive option to prosecutors.

The treatment of rationales, in theory and in practice, for the existence of a crime is a welcome beginning to any conventionally published work. In particular, the discussion of practical advantages which inhere to the prosecution in the use of the conspiracy count is welcome and interesting despite the fact that the section is poorly written and organised. However, the section dealing with the theoretical rationales is badly flawed. First, Gillies unacceptably confuses the thrust of the attempt rationale with that of the social danger rationale.[47] Second, Gillies apparently advocates the creation of a generalised preparatory offence to convict all who resolve to commit crime — with no mention of required proof — whether or not they act in combination.[48] This idea is not supported by any argument or reference. In particular, no reference is made to the relatively recent determination of the English Law

41 Gillies at 18.
42 See supra n 15 and Lanham, supra n 36 at 312-3.
43 Gillies at 82-84. See also Gillies at 100-102, 105, which account is equally disconnected.
44 Gillies at 82-83. This conclusion is qualified by the word "presumably" rather than any extended analysis.
45 Gillies at 83 n 3. The footnote deals tolerably well with the English perspective of recklessness, but misses Howard's influential view in the Australian context, and *R v Wozniak and Pendry* (1977) 16 SASR 67. The latter authority states that, apart from homicide, the criterion of recklessness is satisfied by advertence to the *possibility* of a prohibited circumstance or consequence.
46 Gillies at 3-11.
47 Ibid 4.
48 Ibid.

Commission which recommended against just such a proposal.[49] Third, Gillies' discussion remains unadulterated by any consideration of or even reference to the cream of recent secondary material on the point. For example, the writings of Marcus[50] and Dennis[51], and the reports of the Mitchell Committee[52] and the English Law Commission[53] go unmentioned. Indeed, in general, the book contains only a handful of secondary sources, seemingly chosen at random, and is, therefore, of limited use to the serious researcher.

Beyond these matters, however, the lack of any critical edge is damaging to the work. In this area, Gillies concludes, by his own peculiar route, that the preventive attempt rationale rarely justifies the use of the crime of conspiracy. That conclusion is principally buttressed by his perfectly proper observation that few conspiracy prosecutions seem to concern unexecuted agreements,[54] and his unsupported assertion that intending criminals remote from the crime deserve the attention of the criminal law.[55] If the validity of the latter assertion is left undisturbed,[56] then perhaps some pithy comments might have been expected concerning the uncritical yet influential reliance upon the attempt rationale by the House of Lords in a number of recent decisions.[57] There are none. Gillies makes no conclusions at all concerning the social danger rationale beyond the recording of the usual objections to it and the observation that the rationale is unlikely to be popular in these times.[58] It may be fairly concluded from later discussion of such cases as *Withers, Shaw,* and *Kamara* that he has little patience with the social danger rationale, and properly so, for it is nonsense. Given that Gillies does not discuss the modern tendency to justify the crime as necessary to combat organised crime,[59] the simple point is that this leaves the crime of conspiracy with no rationale but a simplistic preventive policy which, at best, justifies "rare cases". The reader may be forgiven for expecting that point to be made, not only in the general discussion, but also in the discussion of specific matters of doctrine, the resolution of which

49 *Criminal Law: Attempt, And Impossibility In Relation To Attempt, Conspiracy And Incitement,* Law Commission No 102 (1980) paras 2.4 and 2.5.

50 Marcus, "Conspiracy: The Criminal Agreement In Theory And In Practice" (1977) 65 Geo LJ 925.

51 Dennis, "The Rationale Of Criminal Conspiracy" (1977) 93 LQR 39.

52 South Australia, Criminal Law And Penal Methods Reform Committee, *The Substantive Criminal Law* (Fourth Report, 1977).

53 Ibid.

54 Gillies at 4-5.

55 Gillies at 5. See supra n 48-49. Gillies states that police preventive action in these unexecuted conspiracy cases was "obviously imperative".

> "The phrase 'we (I) (you) simply *must* —' designates something that need not be done. 'That goes without saying' is a red warning. 'Of course' means you had best check it yourself. These small-change cliches and others like them, when read correctly, are reliable channel markers." Heinlein, *Time Enough For Love* (1973) 251.

56 Dennis, supra n 51 at 42:

> "An explanation of the aim and justification of criminal liability is not an explanation of the incidence or distribution of liability . . . Finding the rationale of an offence requires an examination of the *particular* interests to be promoted by that offence. What are the considerations which make it desirable to punish that form of conduct as opposed to other forms, or indeed, any form of the conduct in question?"

57 Notably in *Owen* [1957] AC 602; *Doot* [1973] AC 807; *Nock* supra n 16.

58 Gillies at 4 and 7.

59 See, eg South Australia, Criminal Law And Penal Methods Reform Committee, supra n 52 at 309.

depends upon the question of the applicable rationale.[60] It is not. Moreover, in discussing the practical reasons for charging conspiracy, Gillies fails to make the point that none of the given reasons *justify* the existence or use of the crime, they merely provide an explanation of its popularity. Many things may be popular, for all kinds of indefensible reasons, but the reasons provided by Gillies show that conspiracy is used simply because prosecutors believe that, in a given case, it will increase the likelihood of a conviction either by the legal circumvention of substantive[61] and, procedural[62] laws and policies designed to protect those accused of crime or by reason of special, indefensible rules of evidence[63] and the involvement of an innocent or minor agent in the complex morass of the guilt of others.[64]

But Gillies offers no comment or conclusion upon any of this. Surely it is a matter of some moment if, having come so far, it can be shown with a minimum of effort that the crime has little if any defensible rationale, and is commonly useful in abuse of normal legal procedures.

One area in which a critical assessment of the rationales is vital to an intelligent appraisal of the probable state of conspiracy law in Australia is that dealing with the scope of the doctrine of "unlawful act". For example, the attempt rationale is of no use, for it cannot justify preventive action against persons who are not engaged in behaviour which is a crime *sans* agreement. Gillies' book deals largely with the extent to which conspiracy may be charged with respect to an objective which is not a crime if committed by one person. Approximately 96 of 212 pages deal with this question. In particular, there is a discernible obsession with the decision of the House of Lords in *Withers*.[65] Gillies' critique of the more expansive English decisions rests almost exclusively upon a recurring contrast drawn between the basis of the decision in *Withers* and the mode of reasoning employed by the House of Lords in those earlier cases.[66] At no point does Gillies systematically traverse the question as to whether Australian courts should follow the English decisions in light of such matters of policy as the need for certainty in the law,[67] the role of the jury in such cases,[68] the quasi-legislative role

60 See, eg infra n 70.

61 A notable example is the avoidance of statutory defences such as that of literary merit in obscenity-based conspiracy prosecutions. See *Knuller* [1972] 2 All ER 898 at 906 and 924; Note, (1972) 30 Camb LJ 199; Fine, "Conspiracies *Contra Bonos Mores*" (1973) 19 McGill LJ 136 at 138-139.

62 Notably, rules as to particularization, duplicity, limitation periods and jurisdiction. See Gillies at 7-9.

63 See, eg, Holman, "Evidence in Conspiracy Cases" (1930) 4 ALJ 247; Hunt, "Evidentiary Rules Peculiar To Conspiracy Cases" (1974) 16 Crim L Q 307; McLean, "Conspiracy: Admissible Evidence And Method Of Proof" (1979) 21 Crim L Q 286. There is a mass of secondary material on this point, in light of which Gillies' treatment is, to say the least, thin. An example occurs in Gillies' text at 187 n 60 in which a point of fundamental controversy is not discussed, but merely "solved" by the presentation of one view in the text and the relegation of the other to a footnote.

64 The most obvious example is *Griffiths* [1966] 1 QB 589 (CA).

65 [1975] AC 842

66 See, eg, repetition by Gillies at 2, 3, 53-56, 59-60, 64-65, 67, 75-81, 104, 124-125, 134-135, 138, 140-142, 151, 153-156, 158, 195. In short, approximately 15% of the book is concerned with *Withers*.

67 See, eg, the English Law Commission, *Criminal Law: General Principles, Inchoate Offences, Conspiracy, Attempt And Incitement*, Working Paper No 50, (1973) para 9; Sayre, "Criminal Conspiracy" (1922) 35 HLR 393; Davies, "The House Of Lords And The Criminal Law" (1961) 6 JSPTL 104; Brownlie and Williams, "Judicial Legislation In Criminal Law" (1964) 42 Can Bar R 561; Fine, supra n 61.

68 Those authorities cited ibid all consider this matter. See, in particular, Lord Reid dissenting in *Shaw* [1962] AC 220 at 281.

of judges,[69] and conformity of doctrine with defensible rationales.[70] *Withers* is an important decision, but an essentially simple one, and much of the space devoted to it in this book is unnecessarily repetitive in content.

With minor exceptions,[71] the leading decisions in this area are English and Canadian, and so the question of the state of Australian law must, with the dearth of local authority, be decided upon the basis of a detailed critique of the foreign doctrine. Gillies provides extensive discussion of the leading English cases, but omits reference to leading Canadian cases which provide strong support for his own conclusions. In particular, Gillies discusses the provisions of the Code states. He points out that there has been no local decision dealing with the meaning of the general reference in the codes to "unlawful purpose" and "unlawful means". He submits that, given the force of the restrictive policy adopted by the House of Lords in *Withers,* these potentially very wide phrases should be interpreted as restrictively as possible.[72]

The phraseology of the Canadian Code is essentially very similar to the formula used in the Australian Codes, which is hardly surprising given the common source.[73] There is a line of Canadian cases which deal with a statutory version of the Lord Denman antithesis in the context of a code designed largely to replace the common law. These cases provide highly persuasive support for Gillies' submissions, and, in particular deal with the tension between a common law background and a code which attempts so far as is possible to replace the common law. Some of these cases deal with the important question, not discussed by Gillies in any way,[74] whether conspiracy to commit any crime at all should be an indictable conspiracy.[75] Some, notably the recent decisions in *Bendall*[76] and *Celebrity Enterprises,*[77] deal with the impact of *Withers* upon a Code based conspiracy charge with results which Gillies would applaud. The most important case in the series is *Gralewicz,* in which a majority of the Supreme Court of Canada held, *inter alia,* that "unlawful purpose" means at least contrary to legislative decree only, and that, even if that were not so, that phrase could not be extended beyond behaviour contrary to legislation, some torts, some breaches of contract, and behaviour either outrageously immoral or extremely injurious to the public interest.[78] Of these recent cases, only the report of the final appeal in *Gralewicz* could possibly have been unavailable to the author – and to his readers.

It should be apparent by now that, in the opinion of this reviewer, the book under review is doctrinally unsound. It is, moreover, not as well

69 See authorities cited at supra n 67.
70 Ibid.
71 Notably *Howes* (1971) 2 SASR 293 and *Cahill* [1978] 2 NSWLR 453.
72 Gillies at 61-65.
73 That is the much criticized formula, later retracted, of Lord Denman CJ in *Jones* (1832) 4 B & Ad 345 at 349, 110 ER 485 at 487; see also *R* v *Peck* (1839) 9 A & E 686, 112 ER 1372; *R* v *King* (1844) 7 QB 782, 115 ER 683.
74 See, eg, Gillies at 88-89.
75 See, eg, *R* v *Layton ex p Thodas* [1970] 5 CCC 260, (BCCA); and *R* v *Jean Talon Fashion Center Inc* (1975) 22 CCC (2d) 226 (QueQB).
76 (1977) 36 CCC (2d) 113 (ManCA).
77 [1977] 4 WWR 144 (BCCoCt); also [1978] 2 WWR 562 (BCCA).
78 (1980) 54 CCC (2d) 289 (SCC). The lower court decisions are to be found at (1978) 42 CCC (2d) 153 (OntHC); (1979) 45 CCC (2d) 188 (OntCA).

organised as it could have been. Reference has already been made to the dual, and inconsistent, discussion of the relevance of recklessness.[79] The author's habit of reaching a point and then informing the reader that an important aspect of a controversial matter is discussed elsewhere is particularly irritating.[80] The fact that an extraordinary proportion of the footnotes simply refer the reader to some other page in the book is also indicative of a very poor sense of organisation.

The book also contains a number of formal and/or typographical mistakes. Not all cases referred to in the text will be found in the table of cases.[81] Some mistakes appear to be the result of inadequate proof reading, for example the printing of Morrison for Harrison,[82] and Masfield for Mansfield,[83] as well as a number of incorrect citations.[84] Other mistakes are more serious. For example, the reader is informed that the decision in *Kamara* is consistent with the policy of and reasoning in *Withers* whereas it is clear from previous discussion that the word "inconsistency" is meant.[85] Elsewhere, the text states that *Withers* stands for the proposition that the offence of conspiracy to corrupt public morals is not known to the common law,[86] that there is no reported New Zealand case on a particular point,[87] and that the law prior to *Shannon* required a person convicted of conspiracy to be acquitted if all of his alleged coconspirators are subsequently convicted.[88] Each of these propositions is quite clearly wrong, and it is impossible to believe from the foregoing text that they were intended as they appeared.

Lastly the standard of written expression can only be described as lacking polish, for example, choice of phrases such as: "it is not to be overlooked",[89] "the view may be taken",[90] "the prosecution, etc., of which offence",[91] "it is logical, it is proposed, to regard it as being in itself",[92] "it may be allowed . . . that it is important",[93] and over use of the weasel word "presumably".[94]

This book cannot be recommended. The grounds upon which this is so could have been multiplied. That is a pity, for the project is a worthy one. Practitioners and teachers desperately need texts in specific areas of Australian criminal law. However, they need at least the aspirations and quality of Krondorf, and not more rotgut red.

M R Goode

79 See supra n 36-45.
80 See the particularly aggravating examples in Gillies at 43 n 130; 60 n 40; 63 n 58; 80 n 83; 98; (at which *Allsop* (1977) 64 Cr App R 29 (CA) is spread all over the map); and 117 n 64.
81 See, eg, supra n 13 and n 18.
82 Preface, vii.
83 Gillies at 69.
84 See, eg, Gillies at 95 (*Johnston* (1902) in text and (1892) in n 17); at 97 (*Allsop* (1977) in text and (1976) in n 31); at 122 (*Shaw* (1962) in text and (1976) in n 6).
85 Gillies at 141.
86 Ibid 151.
87 Ibid 184-185.
88 Ibid 203.
89 Ibid 125.
90 Ibid 84.
91 Ibid 132.
92 Ibid 162.
93 Ibid 177.
94 Ibid 82, and 182 n 35. See also supra n 55.

THE LAW OF CRIMINAL COMPLICITY, *by P Gillies* (Law Book Co, 1980) pp xxi, 319.

This is one of two books by Peter Gillies dealing with an area of law which depends for its existence upon the presence or possibility of some other offence. (The other book, *The Law of Criminal Conspiracy,* is reviewed by M R Goode in this issue). These offences impose criminal liability upon behaviour that is usually of a supplementary or secondary nature and often deal with acts that are somewhat removed from the principal offence. This might suggest that such offences ought to be applied with some caution due to the inherent uncertainties surrounding them. On the contrary, law enforcement officers have displayed a tendency to make excessive use of these offences and this in turn has tended to cloud their meaning and application.

The many procedural anomalies in this area of the law reflect the particularly arbitrary history of the crime of complicity. Yet, so far as I am aware, the author's claim that his book is the first of its type among common law jurisdictions is entirely justified. Accordingly, the mere presence of this book has much to commend it in that it seeks to expand our awareness of an area of law which is of fundamental significance in the day to day operation of our courts.

Gillies declares the book's major ambition to be the comprehensive statement of the substantive and procedural law relating to accomplices. To a considerable extent this objective is achieved. Certainly he provides a very useful and thorough account of the way in which statutory intervention has modified many of the principles governing the law of complicity within various jurisdictions.

I find it regrettable however that much of the book is occupied with expounding the traditional categories of complicity for these tend to dominate the approach of the whole analysis. Adherence to these outdated notions has created many of the ambiguities which now cloud the application of the law in this area.

Gillies' analysis is detailed without being thorough. While the book fills out considerably the treatment typically given complicity in most criminal law texts, it does little more. Given that Gillies has made complicity the sole subject of the book one might have expected a more imaginative approach.

Due to the lack of any thematic approach the chapters tend to be presented as disaggregated units: the earlier chapters are particularly guilty of this. Much of the introduction is confusing and it will not help initiate students at first and second year level (who must make up a large percentage of the book's potential market) into the topic. Chapter Four on the other hand gives a useful, although incomplete, analysis of the *mens rea* required of an accessory.

Chapter Seven is possibly the most interesting chapter of the book. While it purports to be simply a collection of miscellanea this chapter poses several worthwhile questions: What is an accessory's liability when the principal offender is absolved due to a lack of *mens rea*? When will a witness to a crime be regarded as an accomplice?

The chapter dealing with procedural aspects is also something of a mixture. It commences with a discussion of the means for altering proceedings when it becomes apparent that a defendant charged as a principal is in fact an accessory and *vice versa*. This is followed by an exposition of the problems encountered when accessories are convicted while principal offenders are not and where an inconsistent verdict is given for a joint crime. Here the author covers some important notions of contemporary significance.

The reform proposals examined in the final chapter are largely predictable. Further, it is doubtful that such patchy reforms will repair the anomalies that Gillies suggests exist. There is also a tendency to underestimate the significance of new directions being taken in the conceptual derivation of complicity. For example, many recent cases (eg *Maxwell* [1978] 1 WLR 1350) have interpreted *Bainbridge* [1960] 1 QB 129 as making the *mens rea* of complicity tantamount to recklessness. Nevertheless such a proposition has never been formally stated. There is also considerable support for the idea that liability for complicity should be based upon a causation approach rather than the liability of an accessory being dependent on that of the principal offender. It would not have been unreasonable to expect Gillies to have considered these issues in some depth.

In short I found this book useful but disappointing. It is useful in that it seeks to see through the highly technical categorization of accessories and the equally technical rules that attach to them. It painstakingly breaks down the elements of complicity and to some extent succeeds in easing the complexity. It is disappointing in that Gillies fails to adopt a more thematic approach by which the reader might gain a clearer picture of the real issues underlying the law of complicity.

First, the book fails to explain adequately even relatively simple concepts to junior students, and secondly, it fails to develop any real innovations which might be of interest to the initiated.

David Lewis

SAWER'S AUSTRALIAN CONSTITUTIONAL CASES *4th edn by L Zines and G J Lindell* (Law Book Co, 1982) pp xxxv, 774.

The 3rd edition of Geoffrey Sawer's *Cases on the Constitution* was published in 1964, with updating supplements published in 1970 and 1973. The need for a casebook when dealing with Australian constitutional law is particularly acute, since the cases are frequently very long and often contain repetitive judgments. Further, the pertinent points in the judgments, if not obscure in themselves, are often obscured by discussion of difficult facts and doctrines. A casebook then can both make the cases more immediately accessible, and if well edited, point up the relevant and most significant parts of the judgment. Such a casebook rapidly becomes a most valuable adjunct to any study of the subject.

The 3rd edition of Sawer's casebook fulfilled these necessary requirements. It was well edited, rarely excluding either any significant cases or any significant points of the judgments extracted, and also dealing with relevant parts of other judgments. Further, it included both useful background notes to some cases, and some pointed comment.

Clearly, however, a casebook has limitations. Lacking broader exposition, it is not a textbook in itself. Nor can it include all the cases on a topic, or all the judgments in the cases which are included; and since what is relevant is often a subjective matter, criticisms can always be made on this basis. But the major limitation which attaches to a casebook is the fact that it dates, more or less rapidly, according to the rapidity of development in the area of law with which it deals. Since 1973 there have been enormous and significant developments in constitutional law in Australia, and these developments, although they did not eclipse the value of Sawer's casebook, certainly limited it. This new edition has been prepared specifically to remedy this defect. It is appropriate then to look to this new edition to reflect these developments, and the new directives and interests of the High Court.

Thirty-one cases in the 3rd edition have been excluded by the new editors. In their place, twenty-two new cases have been included, not all of them dating from 1973. A number of the cases included in the earlier edition but not appearing as principal cases here are in fact dealt with by including much shorter extracts from the judgments, or by commentary in the notes. Two notable exceptions from Sawer's 3rd edition, *Australian Coastal Shipping Commission* v *O'Reilly* (1962) 107 CLR 46 and *Redfern* v *Dunlop* (1964) 110 CLR 194, have been included, as well as others which might have been expected to have been represented in one of the two supplements, such as *The Payroll Tax Case* (1971) 122 CLR 353 and *The Receipts Duty Case* (1970) 121 CLR 1. However, the bulk of the new cases date from about 1975. The line of new cases dealing with s 92 illustrates both the rapid development of this area by the High Court over the last 10 years, and the rashness of Sawer's own comment in his Preface to the 3rd edition, on "the completion of the revolution in the interpretation of s 92".

What is excluded from the 4th edition can be dealt with on two bases: whole topics which have been excluded, and specific cases which are no longer included. Zines and Lindell justify the exclusion of some topics, such as the nature of *inter se* questions and the extent of the post war defence powers, on the grounds of their diminishing significance, and of some others, such as immigration and federal jurisdiction, on the grounds of economy (which presumably implies that they too involve matters of less significance than others which are included). These two matters, immigration and federal jurisdiction, seem to be unfortunate exclusions. With the expanding and increasingly controversial function of the Administrative Appeals Tribunal in relation to immigration and deportation, the cases dealing with these matters (included in the 3rd edition) may become very significant indeed. Similarly, recent cases dealing with federal jurisdiction seem very significant in relation to the function of the High Court.

The editors provide no excuse, however, for failing to deal with two other areas of constitutional law. There are no cases on s 51 (xxxix) at all, although two, the *CSR Case* (1913) 17 CLR 644, and *R* v *Kidman* (1915) 20 CLR 425, appeared in the 3rd edition. The *CSR Case* is perhaps of less importance though of considerable historical value, but the judgment of Isaacs J in *Kidman* at least provides a suggestion of some useful and sensible interpretation of s 51 (xxxix). The only discussion of the incidental power appears in a short and inadequate note after the extract from the *AAP Case* at pp 162-163. Another topic excluded is that of the Commonwealth exclusive powers in s 52(1). *R* v *Phillips* (1970) 125 CLR 93, the second of the three cases which decided that the scope of Commonwealth power under s 52(1) was absolutely general, thus excluding any state law at all from operating on the Commonwealth subject matter, was included in the 2nd supplement. Although the immediate effect of this decision is largely overcome by Commonwealth and complementary state legislation, the implications of the decisions are considerable in relation to s 52(2). The point is mentioned as an adjunct to the *Cigamatic Case* in a note to that case (at p 55), but in fact different constitutional issues are raised, as well as acute questions relating to the High Court's notions of the nature of legislative power. It is a pity that neither *Worthing* v *Rowell* (1970) 123 CLR 89 nor *Phillips* is included.

Many cases included in the 3rd edition have also been left out, even though the general area has been dealt with. In general, this is because older cases have been superseded by more recent developments, and their interest is now largely (though not entirely) historical. This is certainly the case with the s 92 cases. S 92 is served very well by this edition, which includes a note on the idiosyncratic position adopted by Murphy J. Of course, to include the number of recent cases many old cases have to be left out, but the exclusion of some specific cases undermines the usefulness of this 4th edition as a case book.

The most glaring exclusion is that of the *State Banking Case* (1947) 74 CLR 31. The more recent *Payroll Tax Case* has been included but *State Banking* is a far more important case than *Payroll Tax,* and the analysis of the earlier case in the judgment of Gibbs J in *Payroll Tax* which appears here is simply inadequate for a real understanding of the different approaches to constitutional interpretation which appear in *State Banking.* On the question of characterization *Barger's Case* has also been excluded, though the more recent characterization cases, *Fairfax* (1965) 114 CLR 1 and *Murphyores* (1976) 136 CLR 1 are included: these cases, though they disapprove of *Barger,* do not overrule it, and the High Court has, despite this more recent view, displayed a fondness for the *Barger*-style characterization from time to time, as in Latham's judgment in *State Banking.* It is Dixon's judgment in that case which provided the foundation for the *Fairfax* and *Murphyores* form of characterization.

Two other areas of enormous development since the 3rd edition are s 90 and s 51(xx). These new developments are reflected by the inclusion of the principal new cases and some helpful notes, but there are also some puzzling exclusions. In relation to s 90, the *Receipts Duty Case* and *Dickinson's Arcade* (1974) 130 CLR 177 are included, but not *Kailis' Case* (1974) 130 CLR 245, which provides a fine illustration of the limits which the High Court has placed on the *Dennis Hotels* doctrine, followed reluctantly (by some members of the court) in *Dickinson's Arcade.* Curiously enough, the principal case, *Dennis Hotels* (1961) 104 CLR 621 is itself excluded though it appears in the earlier edition. *Strickland's Case* (1971) 124 CLR 468, which had appeared in the 2nd supplement, and *Adamson's Case* (1979) 23 ALR 439 represent the new law on s 51(xx), *Huddart Parker* v *Mooreshead* (1909) 8 CLR 330 having been overruled since the 3rd edition was published. But bearing in mind the fact that the High Court has resolutely refused to set out the limits of s 51(xx), the dissenting judgment of Isaacs J in *Huddart Parker* must take on considerable significance, so it is a pity that it is not included. A similar criticism may be extended to some of the editing. While the inclusion of the *ANAC Case* on inter- and intra-state trade is excellent, it is perhaps a pity that the whole of Murphy J's short judgment on this point is not included, involving as it does a trenchant criticism of the attitude of the High Court to the interpretation of s 51(1): an attitude which derives from Dixon C J's judgment in *Wragg's Case,* which is also excluded from the new edition.

At the same time there are many positive things which may be said of this new edition, the most obvious and important being that it has brought the book up to date by including clearly the most important developments from the High Court in constitutional law. S 92, the defence powers and the judicial powers are particularly well represented (although neither *Alexander's Case* (1918) 25 CLR 434 nor the *Advisory Opinions Case* (1921) 29 CLR 257 are included). The recent cases relating to Parliament and the federal electoral system are also useful, and indicate a whole new area of constitutional development which had not even been touched on by the High Court prior to 1974.

The notes which occasionally follow the extracts from the cases are often more extensive and explanatory of the background to the cases than had appeared in Sawer's editions. These are often very useful in understanding a case and assessing its impact. These notes are particularly good in dealing with the Commonwealth/States financial agreement which appear after the extract from the *Second Uniform Tax Case.* They are also excellent in dealing with s 51(xxxv) and the judicial powers. The editing of the cases is also generally of high standard, supplemented as it is by the notes and short extracts from other cases and judgments in addition to the principal case or judgment which appears. Where cases which appeared in the 3rd edition have been included the extract is generally the same although not always: the extract from the Privy Council judgment in *Bank Nationalization* (1949) 79 CLR 497 for example, has been further edited, as has been the extract from the *Hughes & Vale (No 1) Case* (1954) 93 CLR 1.

Casebooks are not intended to be textbooks, and clearly they cannot be exhaustive. However, sometimes the exclusions are disappointing, particularly since this edition contains only 59 cases to the 68 which appeared in the 3rd edition. Given this, and that the paper covered edition is $37.50, perhaps it is legitimate to have higher expectations.

Kathleen McEvoy

OPINIONS OF ATTORNEYS-GENERAL OF THE COMMONWEALTH OF AUSTRALIA, WITH OPINIONS OF SOLICITORS-GENERAL AND THE ATTORNEY-GENERAL'S DEPARTMENT, Volume I: 1901-1914 (AGPS, 1981) pp l, 723.

Since Federation, the Attorneys-General of the Commonwealth, the Solicitors-General and senior officers of the Commonwealth Attorney-General's Department have been furnishing written opinions on questions of law to federal ministers, departments and instrumentalities. These have not hitherto been available to the public except in those rare cases when an opinion was tabled in Parliament or published as part of a Parliamentary Paper. The present fascinating volume contains a selection of the opinions given from January 1901 to August 1914. In this period about 123 opinions were given per year. Today the number is about 1250 — ten times as many.

The publication of this volume was first authorised by Attorney-General Lionel Murphy; later Attorneys-General Enderby, Ellicott and Durack continued their support for the project.

The Attorneys-General whose opinions are printed include Alfred Deakin, James Drake, Henry Higgins, Josiah Symon, Isaac Isaacs, Littleton Groom, William Morris Hughes, Patrick Glynn and William Irvine. Nevertheless, it is clear that many of the opinions signed by the Attorneys-General were in fact written by Robert Garran, first Solicitor-General of the Commonwealth. His clarity of thought, style and expression shines on almost every page. Indeed, it is known that his initials appear at the foot of the page of many of the opinions as signed. It is fortunate that these opinions have been preserved intact in the archives of the Attorney-General's Department and have now been published.

The selection of the opinions for publication presented some difficulties. Some had to be excluded on the ground that — seventy years later — they could still prejudice public or private interests. In other instances it was necessary to choose between opinions on major questions of constitutional law and others on legislation of lesser importance — perhaps even repealed. The tests applied, as mentioned in the preface, seem to have been sound — "Is the opinion of sufficient continuing legal relevance? . . . Does it have historical interest or significance?"

As might be expected, many of the opinions deal with constitutional questions. They are important for two reasons. First, they show how difficult it was for the States and, in some instances, the Colonial Office, to come to grips with this new power that had come among them. Secondly, they show the thinking of the early law officers of the Commonwealth about the origins and operation of the Constitution. Another thing that strikes the reader is the sound commonsense shown in many of the opinions. This is unquestionably due to the influence of Garran.

The volume shows that in a number of cases reconsideration of an opinion was sought. But Departments were out of luck; it is almost impossible to find a case where an opinion was reversed on reconsideration. In a few, but not all, cases a note is given where an opinion has been affected by a later High Court decision. The value of the volumes still to be published would be enhanced if a note were given in each such instance.

Many of the opinions sought were on matters of finance. It is interesting to note that in 1911 the opinion of Attorney-General Hughes was sought by the Treasurer on a question similar to one that arose in 1975 when the Whitlam Government was facing the blocking of Supply by the Senate:

> "I should like to be advised whether it is lawful for the Treasurer to incur an obligation — say, with a bank, to meet the claims of admitted creditors of the Commonwealth, prior to the passing of further Supply." (p 557)

The reply was characteristically short and clear:

> "In my opinion there is nothing unlawful in such an arrangement. It is not unlawful for the Treasurer . . . to incur pecuniary obligations to meet which no funds are as yet available." (p 558)

The book is invaluable for both teachers and students of constitutional law. There is probably no better way of studying basic constitutional principles. There is scarcely any section of the Constitution that is not touched upon; and those that are touched upon are not only enlightened but enlivened. The 700 pages of the book need be no deterrent; a selection can easily be made from the excellent index of those of specific interest.

The book has further value in bringing to the notice of students the work of the Commonwealth Attorney-General's Department and may well tempt some to seek to work there. They would by no means be the first South Australians to do so.

Finally, it must be said that the printing, proof reading and binding are excellent. The present reviewer has not noticed a single mis-print.

*J Q Ewens**

CASES ON EVIDENCE IN AUSTRALIA, *by E J Edwards, 3rd edn* (Law Book Co, 1981) pp xxix, 795.

LITIGATION: EVIDENCE AND PROCEDURE, *by M Aronson, N Reaburn and M Weinberg, 3rd edn* (Butterworths, 1982) pp xxxviii, 838.

"Authors can be stupid enough, God knows, but they are not always quite so stupid as a certain kind of critic seems to think. The kind of critic, I mean, to whom, when he condemns a work or a passage, the possibility never occurs that its author may have foreseen exactly what he is going to say."

W H Auden, *Reading* in *The Dyer's Hand* (New York, 1968).

Teachers of evidence at Australian university law schools are now afforded a choice between three current casebooks, when deciding which casebook to prescribe to students. One of these, *Litigation: Evidence and Procedure* by Messrs Aronson, Reaburn and Weinberg, is aimed at law schools where abbreviated or combined courses on evidence and procedure are taught. The others, *Cases and Materials on Evidence* by Messrs Waight & Williams (see review in (1981) 7 Adel L Rev 417) and *Cases on Evidence in Australia* by Professor Edwards, are designed for use in law schools where evidence is taught as a discrete subject in its own right. The three casebooks must be compared in the light of their different objectives.

Perhaps the most refreshing features of *Litigation* are, first, the enthusiasm of the authors to update it — this is the third edition of a work first published in 1976, the second edition having appeared in 1979; secondly, the authors focus attention on those areas of the law which are in a state of flux — for example, the rules relating to the cross-examination of victims of sexual assaults, the exclusion of confessions in criminal cases, the privileges, and the admissibility of "similar fact evidence" and of other character evidence. This treatment permits a more cursory presentation of more stable branches of the law such as the

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common law hearsay rules and the burden and standard of proof, and thirdly, and most importantly, the book is presented to the student reader in a way which is deliberately provocative, and in some instances, polemical.

The features which distinguish Professor Edwards' book from the other two casebooks are, first, its numerous and very useful short notes of decided cases, presented in conjunction with extracts from the principal judgments; and secondly, the brevity of the commentary. For example, Professor Edwards' commentary on the "similar fact" rules covers less than one page, whereas in *Litigation* and in Waight & Williams, the cases are introduced and succeeded by quite voluminous editorial notes. To some extent, these editorial notes alter the nature of the books from a casebook to a textbook, but they are very useful to students required to read material in advance of lectures, or in the context of a course taught by seminars. There are a number of shortcomings in Professor Edwards' book, in comparison with the other two: first, the treatment of the rules relating to the cross-examination of rape victims is extremely cursory (see p 345); secondly, there is no adequate treatment of the privilege against self-incrimination and the other privileges; thirdly, in some sections (for example, in presenting the rules relating to refreshment of memory) the author allows the short notes of cases (8 pages of small type) to overwhelm the principal cases (6 pages). By the same token, there is more material on the burden of proof in civil cases and on the examination of witnesses than in the other casebooks.

Neither book has a list of statutory references, unlike Waight & Williams. In addition, the table of cases in Professor Edwards' casebook is incomplete. At the end, though, the lecturer's choice of work will depend on his own professional idiosyncrasies and the exigencies of the course which is being offered.

Philip McNamara

PROCESS, PROCEDURES AND PLANS, *by A Fogg* (Australian Institute of Urban Studies, 1980) pp xix, 448.

Planning and development control law and administration in South Australia has failed to attract the attention of authors with the exception of Dr Alan Fogg, a Queenslander, who first dealt with South Australian planning law in his book *Australian Town Planning Law* in 1974, as part of an overview of national planning law.

He was sufficiently impressed with John Mant's ideas for revamping the administrative processes in the Department of Urban and Regional Affairs to return to South Australia for his study leave to carry out the research which formed the basis of this book. We can be well pleased that he did, because Dr Fogg has written a readable and comprehensive exposition of the relationship between the law in relation to planning and developmental control and the administrative processes involved in its implementation.

Dr Fogg's book will appeal to a wide variety of people, lawyers, planners, architects and the like who are in any way associated or interested in urban affairs.

Whilst this book was clearly not intended to be a textbook, from the planning lawyer's point of view it is, nevertheless, the closest publication we have in South Australia to a textbook on planning law.

The author commences with a most useful historical outline leading to the Planning and Development Act itself. He then proceeds to deal with the "management" side of planning and departmental initiatives introduced by John Mant such as the expansion of the Department into Housing and Urban Affairs, the Metropolitan Adelaide Staging Study and the concept of sector managers.

It is refreshing to note the critical analysis of the system and particularly useful is the comparison with developments in other states based on the author's own extensive experience.

Practitioners in the planning law and development control area will find his chapters on Interim Control, planning regulations, non-conforming uses, third parties and planning appeals particularly useful, because they are supported by extensive case analysis and notes. It is in this area that the book prompts a criticism (or rather a comment) and that is that a number of the cases relied upon by the author have since either gone on appeal or the principles enunciated by them have been changed or modified in subsequent appeals.

The author himself, however, acknowledges this possible drawback by indicating the need to terminate his research as at December 16, 1979. Whilst the comment is worth making for the sake of caution, it by no means detracts from the value of the work as a whole.

The author has, with uncanny accuracy, also foreshadowed the new planning legislation which has now been assented to in the form of the Planning Act, with the result that a book which may have been out of date as soon as it was published, is in fact very much alive and well.

In the result this book is welcomed for a variety of reasons, not the least of which is that at long last, someone as accomplished as Dr Fogg has written a book analysing the South Australian planning law and administration, a subject which has been sadly neglected for too long.

B R M Hayes

LIST OF BOOKS RECEIVED

(Inclusion in this list does not preclude review in a later issue)

ARMSTRONG, M *Broadcasting Law and Policy in Australia* (Butterworths, 1982) xxviii, 291p, hard $29.50 (ISBN 0 409 30910 9).

ARONSON, M I, REABURN, N S, & WEINBERG, M S *Litigation: Evidence and Procedure* 3rd edn (Butterworths, 1982) xxxviii, 838p, cloth $49.50 (ISBN 0 409 30793 9), paper $42.50 (ISBN 0 409 30794 7).

ATIYAH, P S *An Introduction to the Law of Contract* 3rd edn (Clarendon Press, 1981) x, 335p (Clarendon law series) cloth $45.00 (ISBN 0 19 876140 6), paper $15.95 (ISBN 0 19 876141 4).

BAXT, R *An Introduction to Company Law* 2nd edn (Law Book Co, 1982) xxii, 356p, cloth $22.50 (ISBN 0 455 20464 0) paper $14.50 (ISBN 0 455 20465 9).

BOER, B and GLEESON, V *The Law of Education* (Butterworths, 1982) xix, 211p, paper $19.50 (ISBN 0 409 30923 0).

BRADBROOK, A J and NEAVE, M A *Easements and Restrictive Covenants in Australia* (Butterworths, 1981) xlv, 422p, hard $42.50 (ISBN 0 409 30048 9).

BUTT, P J, CERTOMA G L, SAPPIDEEN, C M and STEIN, R T J *Cases and Materials on Real Property* (Law Book Co, 1980) xlvi, 667p, cloth $46.00 (ISBN 0 455 20044 0), paper $32.00 (ISBN 0 455 20069 6).

BUTT, P *Introduction to Land Law* (Law Book Co, 1980) xxxi, 395p, cloth $29.50 (ISBN 0 455 20135 8), paper $19.50 (ISBN 0 455 20136 6).

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COLE, K ed *Power, Conflict and Control in Australian Trade Unions* (Penguin Books, 1982) ix, 309p, paper $9.95 (ISBN 0 14 022379 9).

DAWSON, F and McLAUCHLAN, D W *The Contractual Remedies Act 1979* (Sweet & Maxwell (NZ), 1981) xxii, 217p, cloth $29.50 (ISBN 457 01720 1), limp $22.50 (ISBN 457 01690 6).

GAMMELTOFT-HANSEN, H, GOMARD, B and PHILIP, A *Danish Law: A General Survey* (Copenhagen, 1982) 395p, paper Dan.kr 140.—(excl vat) (ISBN 87 12 23525 3).

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GREENER, M *The Penguin Dictionary of Commerce* 2nd edn (Harmondsworth, 1980) 329p, paper $8.95 (ISBN 0 14 051 044 3).

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HOWARD, C *Criminal Law* 4th edn (Law Book Co, 1982) lxi, 452p, cloth $32.50 (ISBN 0 455 20457 8), paper $22.50 (ISBN 0 455 20458 6).

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MILLER, R V *Annotated Trade Practices Act* 3rd edn (Law Book Co, 1982) unpaged, paper $15.00 (ISBN 0726 4410).

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POTAS, I *Just Deserts for the Mad* (Australian Institute of Criminology, 1982) xvii, 221p, paper $5.00 (ISBN 0 642 89248 2).

SACKVILLE, R & NEAVE, M A *Property Law: Cases and Materials* 3rd edn (Butterworths, 1981) lxxi, 936p, cloth $47.50 (ISBN 0 409 30041 1), paper $39.50 (ISBN 0 409 30042 x).

SAWER, G *Australian Constitutional Cases* 4th edn by L Zines and G J Lindell (Law Book Co, 1982) xxxv, 774p, cloth $49.50 (ISBN 0455 20459 4), paper $37.50 (ISBN 0455 20460 8).

SYKES, E I *Strike Law in Australia* 2nd edn (Law Book Co, 1982) xxiii, 369p, cloth $35.00 (ISBN 0 455 20089 0).

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Windsor Yearbook of Access to Justice, vol 1 (1981) (Faculty of Law, University of Windsor, 1981) xxv, 361p, hard C$25.00 pa (ISSN 0710 0841).