BOOK REVIEWS

Legal Obligation, by J. C. SMITH, (The Athlone Press, London, 1976), pp. 256. £8.00.

According to Professor J. C. Smith, when someone has an obligation to do something in the evaluative sense of the term, then it is the case that he ought to do it, and there are good reasons of a non-prudential kind for his doing it. The reasons justifying the obligation will refer to the social practice which gives rise to the obligation. The benefits and burdens created by the social practice fall reciprocally on everyone engaged in the practice, and are voluntarily accepted because they are seen to be in the long term interests of all. Legal obligation is merely a special case of this general theory of obligation. The statement that one has a legal obligation in the evaluative sense implies that the law can be justified in terms of the ends which the legal system seeks to achieve. When one has a legal obligation to do X, it is the case that one ought to do X. But the "ought" here is not a moral "ought", for it is justified not in terms of the ends of the moral order, but in terms of the structure of goals of the legal order itself. So legal obligation is not a species of moral obligation. But at the same time, to say that one has a legal obligation in this evaluative sense is to say more than that the particular rule imposing that obligation is a valid law, for whereas it is not the case that one ought to conform to every valid law, it is the case that one ought to do whatever one has a legal obligation to do.

It is not clear whether all the features in terms of which Professor Smith discusses the notion of obligation are features which constitute part of what is meant by saying that someone has an obligation, or features whose presence actually gives rise to obligations, or, on the other hand, merely features which are present when someone *views* a situation as giving rise to obligations. He begins by giving an analysis of what is *meant* by saying that one has an obligation, and then seems to move on to a normative theory of when obligations arise. Thus at the end of his analysis in Chapter III, he writes: "To understand obligation we must first ascertain those factors or states of affairs which bind, oblige or obligate, and therefore give rise to obligations" (p. 59). Such a normative theory will seek to justify our having certain obligations. However, in the next chapter, there are many references to the conditions under which people "view" or "conceive of" or "regard" obligations as arising. But no one uniform account of when people *regard* themselves as having obligations can be fully acceptable, and Professor Smith seems to realize this when he says that in the absence of the required conditions, certain obligations will "probably" not be viewed as arising. For example, the reciprocity of burdens and benefits may be a necessary condition for justifying the imposition of obligations on a group of people, but it is at most only a requirement that is usually present when people regard themselves as having obligations. In a caste society, those in the lower caste may well believe that they have obligations to others, even though the social system does not require others to accept similar burdens towards them. It is one thing to say that the lower caste has in fact no obligations. But it is quite a different thing to say that they do not conceive themselves as having obligations, for that would simply be false if they accepted their place in society.

However Professor Smith points out that when people speak of obligations or duties attaching to various offices, or of those related to a certain status, they are using the term in a purely descriptive sense. According to him, we would not say, for example, that the janitor had an obligation (in the evaluative sense) to sweep the floor unless we could justify the obligation in terms of social practices having the features of reciprocity, etc. But what *we* would say depends on our normative theory

which may not be the same as that of the janitor. He may regard himself as having an obligation. It is then untrue that *his* statement that he has the obligation is purely descriptive. Professor Smith seems to think that the very meaning or the logic of the concept of obligation limits the type of normative theory that can be put forward to justify our obligations. But even if this is true, it only shows that those subscribing to certain normative theories are mistaken, and not that when they make obligation-statements they are making purely descriptive or non-evaluative statements. Suppose people in a different society speak of their having certain moral obligations under conditions of non-reciprocity. Professor Smith will say that they do not in fact have these moral obligations although they think that they have. But from this it does not follow that they are using the term "obligation" in a purely descriptive sense. The descriptive statement is the different statement by external observers that people in that society believe that they have certain moral obligations, and not the statement by those in the society that they have the moral obligations in question.

But in an extreme situation, Professor Smith thinks that those who talk of legal obligations are inconsistent. His example is that of a society which has a Nazi-like genocide law, "All members of race A shall report to concentration camp X for extermination". He argues that if we say to a member of race A, "You have a legal obligation to report to concentration camp X to be exterminated", then our statement is internally inconsistent if "obligation" is used here in the evaluative sense. But if this is true of legal obligation, it must also be true of moral obligation. However, it is very odd that those extreme racists who believe that members of race A have a moral obligation to report themselves for extermination, are guilty not of a moral vice, but only of a formal error of inconsistency. Professor Smith has argued himself out of a moral ground for condemning them.

If we regard Professor Smith's theory of obligation as a theory about when various obligations are justified, then it is difficult to see why, on his view, all obligations are not in the end moral. He writes: "The nature of the concept of obligation itself requires a moral justification for any system of rules which are conceived as giving rise to obligations. Any other kind of justification is not appropriate because of the logic of the concept" (p. 70). This point is repeated elsewhere in the book. But at the same time Professor Smith insists that any adequate theory of legal obligation must "allow us to distinguish clearly between legal and moral obligations" (p. 21). He argues that the "ought" of legal obligation does not derive from some external moral obligation to obey the law. Rather, it is derived internally from the justification of the legal order itself. If this argument is correct, it shows that legal obligation is not *derived* from an external moral obligation. But this does not mean that legal obligation is not *itself* a species of moral obligation. If, as Professor Smith believes, the ultimate justification of the legal system and its obligation creating practices is a moral justification, then it would seem to follow that legal obligation is a moral obligation. What we have are different types of moral obligation, but all obligations in the evaluative sense are ultimately moral in character. But this is a conclusion that Professor Smith seems to resist, although he is careful to insist that legal obligation is necessarily related to morality. What prevents the assimilation of legal obligation to moral obligation is perhaps a picture of morality as constituting a unique and unified system which has as its end the common good or something like it. But there can be, and in fact are, different moral systems each one promoting the same kind of general end, and each one satisfying the same general demands of reciprocity, etc.

I have concentrated entirely on the central part of Professor Smith's book, but there is much else that is of interest. In particular, Professor Smith presents a theory of legal decision-making that goes against Dworkin's account without at the same time falling back on the notion of judicial discretion to settle the hard cases. Throughout Professor Smith employs the techniques of linguistic analysis, and because of this, philosophers will sometimes feel more at home with his arguments than lawyers. But there is a great deal here that lawyers will find interesting, if they can sustain their patience through the first few chapters of the book.

C. L. TEN

Diversion: The Search for Alternative Forms of Prosecution, by RAYMOND T. NIMMER, (American Bar Foundation, Chicago, 1974), pp. xiv and 119.

The process of amelioration of prison operates in fits and starts and there is a great deal of modishness in the process of penal reform. The fashion in the criminological literature over recent years has been to regard diversion of offenders from the criminal justice system as a new panacea avoiding, if not overcoming, all the defects of the traditional machinery of criminal justice. Diversion has been hailed as a means of reducing work-loads, compensating for over-criminalisation, avoiding the stigmatisation of a criminal record, and eliminating the time delay between apprehension of offenders and their disposition. Whether these hopes are actually fulfilled, or whether the practice of diverting offenders away from the courts simply shifts responsibility for criminal justice problems on to others without solving them is another matter.

Of course, the practice of channelling criminal defendants away from the courts is not new. Police may negotiate a settlement of a domestic brawl without charging any of the parties with assault; an officer may exercise his power under Police Regulations to warn a child in the presence of his parents instead of bringing him before a Children's Court; a shopkeeper may agree not to prosecute a shoplifter if restitution or compensation is paid; a prosecutor may withdraw charges on receiving an undertaking that the accused person will receive medical or psychiatric treatment; and courts may, before making any adjudication of guilt and without raising the issue of fitness to stand trial, refer an accused to a mental hospital for treatment under "hospital order" legislation such as exists under the U.K. *Mental Health Act 1969*. Diversion can therefore take place at different stages and may entail the imposition of conditions and various forms of coercive control.

Recognising that, in the early seventies, substantial public attention had begun to centre on extended use, in the U.S.A., of techniques of diverting offenders before trial, the American Bar Foundation sponsored a programme of research by a team led by Raymond Nimmer into the nature and function of diversionary processes operating in that country. This book is a report of that study. It commences by acknowledging that many activities can be properly described as diversion from trial and that much writing on the benefits or otherwise of diversionary programmes suffers from ambiguity as a result of failure to specify at what stage and upon what conditions involvement in the formal machinery of apprehension, prosecution and trial was terminated. The operational definition of diversion adopted for the study was that it was

> ". . . the disposition of a criminal complaint without a conviction, the non-criminal disposition being conditioned on either the performance of specified obligations by the defendant, or his participation in counselling or treatment."

Specifically excluded, however, was diversion of juveniles and persons charged with public drunkedness.

The first half of the report documents traditional diversionary practices which occur as part of the existing criminal justice system and are not formalised into any systematic supervised programme e.g. out-of-court resolution of matters such as personal disputes and minor assaults, complaints regarding consumer transactions and bad cheques, and intra-family and neighbour altercations. Similarly withdrawal of charges relating to minor crimes, particularly in relation to drug or alcohol use where the offence appears to be patently symptomatic of an underlying illness and was itself only marginally criminal, was noted to occur frequently as was withdrawal of petty charges against offenders with only minor records. Within this category the study discerned an emphasis on younger offenders in relation to whom withdrawals emphasised avoidance of the stigma of a criminal conviction and an assumption that, without the stigma, the defendant would less likely to repeat his criminal conduct or would avoid other disabilities such as loss of employment which would be grossly disproportionate to the offence committed.

The second half of the report examines the "new diversion". These are new programmes which are characterised as a reactive phenomenon involving recognition "that the system is hopelessly overcrowded with cases; is brutal, corrupt and ineffective; and that therefore every case removed is a gain". Traditional diversion, so called, operated on an *ad hoc* basis with little or no realistic expectation that any supervision of those channelled elsewhere would be undertaken. The new programmes provide services and supervision through newly created agencies or specially funded units often associated with the probation service. The new programmes discharge functions analogous to those observed in the traditional type of diversion namely counselling, settlement of disputes, and orientation towards medical or psychiatric treatment. Typical examples of the new schemes are the court employment programmes which seek to place defendants in jobs or job training settings. They are essentially counselling programmes whose rationale is that the defendants lack of vocational skill and current unemployment or under-employment is directly related to his criminality or, at least, impedes his ability to avoid drifting into crime. While normal employment services are available to offenders, none are specially equipped to deal with persons with socio-economic, educational or other characteristics of criminal defendants and the court employment programmes believe they fill this void. The employment programme model was initiated by the Vera Institute in New York in late 1967 and has been emulated in over thirty cities. In all such programmes participation in the scheme results in termination of criminal proceedings. Similar arrangements operate in relation to the settlement of family crises and the treatment of drug or mentally disturbed offenders.

In its concluding chapter, the report explores the problems inherent in the discretionary decisions involved in determining admission to diversion schemes, the length of the participant's tie to the programme, and the timing and form of the eventual withdrawal of criminal charges against him. The report also explores the respective roles of police, prosecutors, judges, victims and the accused himself in attempts to divert him from trial and sentence. These issues are inordinately complex and not amenable to simplistic analysis or resolution. Whenever diversion occurs and whatever arrangements are made for alternative handling of those who might otherwise come before a criminal court, the legal and philosophical problems are substantial. The most important issue, and the one least adequately treated in this report, is that of the protection of the rights of the defendant. The process of diversion poses more threats to the unconvicted defendant's civil liberties than he faces at the criminal trial itself. At least at the trial some rules have been enunciated regarding procedural fairness and the applicable substantive law. At minimum, submission to diversion must be voluntary and indeed, apart from a general commitment to a belief in the right of the defendant to be free to choose prosecution *or* diversion, voluntariness, as a psychological prerequisite, would seem to be essential to the success of any treatment or counselling programme. Nevertheless, the freedom of choice may be illusory for who, however certain of his innocence, is sufficiently confident of the fairness of the trial process to risk prosecution instead of accepting an offer of "non punitive" diversion. Ironically, there is a substantial risk that, as the level of punitiveness is reduced and diversionary programmes expand, the total numbers under the control and supervision of the state correctional apparatus will increase. As Prisons have become Correctional Institutions and Penal Departments are transformed into Ministries of Social Welfare so, as Orwell predicted, the criminal law will gradually wither away and the Ministry of Love will, by 1984, be responsible for all programmes of reformative diversion.

RICHARD G. FOX

Karl Llewellyn and the Realist Movement, by WILLIAM TWINING, (Weidenfeld and Nicolson, 1973), pp. 574.

Perhaps no other figure in legal philosophy exerts quite the fascination of Karl Llewellyn. Students and practitioners with only the most casual interest in legal philosophy are familiar with his work, even if they have read no more of it than *The Bramble Bush*.

Professor Twining's book is an invaluable contribution to the history of legal thought. It is a highly scholarly, complete account of the work and writing of the fascinating, enigmatic, contradictory genius that was Llewellyn. Further it views his work in the context of the entire realist movement of the 30s, a movement which continues to exert a strong influence on all engaged in teaching and writing about law.

Although Llewellyn's career and writings were many faceted, it is as a legal philosopher that his chief claim to fame must rest. Most widely read of Llewellyn's works is *The Bramble Bush*. The concentration of attention upon *The Bramble Bush* is easy to understand. The majority of Llewellyn's work is difficult to read and complex in the extreme. *The Bramble Bush* on the other hand is based upon lectures delivered to first year students at Columbia Law School. It is discursive, easy to read, and highly entertaining. Further, it contains the essence of Llewellyn's quite comprehensive philosophy of law. It also contains the famous passage which legal philosophers ever since have taken such delight in criticising. Llewellyn wrote

> "This doing of something about disputes, this doing of it reasonably, is the business of law. And the people who have the doing in charge, whether they be judges or sheriffs or clerks or jailers or lawyers, are officials of the law. *What these officials do about disputes is, to my mind, the law itself.*" (p. 12.)

As a definition of law this is obviously open to telling criticism. First, the words which purport to constitute an explanation themselves contain terms which require the same sort of explanation. Obviously it is not possible to define "law" by reference to "official" because "official" means someone authorised by "law" which is the very term which you are trying to define.

Secondly, and more importantly, the definition appears a misleading way of describing the phenomenon law. Consider the following hypothetical example. Suppose that at some future point of time magistrates in Victoria form the view that unemployment should be stamped out by all possible means. They develop the practice of always convicting an accused who is unemployed. They do this quite independently of the charge involved and the evidence presented. They never say unemployment is a relevant factor in their deliberations, but it eventually becomes clear that the practice in magistrates courts can be explained only on the basis that the magistrates are convicting all unemployed accused persons. Assume further that appeal courts become a party to this practice, and invariably dismiss appeals by unemployed persons from magistrates courts. There are two ways of describing such a situation. If he were consistent to his definition Llewellyn would have to say that the law in Victoria is that persons who are unemployed and charged with crimes before magistrates are to be convicted. Alternatively one could say that in Victorian law whether or not a person is unemployed is irrelevant when he is charged with a crime, but that magistrates, with the connivance of appeal court judges, are departing from the law. It seems clear to me that the latter is a more accurate description of what would be occurring in such a situation.

I wish to devote the remainder of this Review to considering the factors which led Llewellyn to his definition of law. I wish to make two points. First, I wish to show that Llewellyn fell into error because his juristic thinking essentially lacked the notion of a peculiar legal "oughtness" distinct from moral oughtness. Secondly, I wish to consider what Llewellyn termed the "leeways of law", and the implications the existence of these leeways has for any theory of jurisprudence which defines law in terms of rules. Essentially I wish to make the point that Llewellyn perceived a

difficulty in defining law in terms of rules which English legal positivism, from Austin to Hart inclusive, has not satisfactorily met.

What led Llewellyn to his definition of law? The most important thing was his belief that disputes and their settlement are the purpose of, and the most fundamental thing about, the law. In his *Jurisprudence* he writes of disputes as the "focus" of matters legal and the "point of reference to which I believe all matters legal can most usefully be referred" (p. 5).

Now this view is certainly open to dispute. It can well be argued that the really important thing about law is the rules it provides for the everyday governing of life, and that litigation and the disputes aspect of the law is really the less important side of the coin. However, given his "focus" or "point of reference" Llewellyn's definition seems to follow almost inexorably for two reasons.

First, Llewellyn realised that there is considerable leeway in the rules of law and their application, and that there is a lot more to the judicial determination of a dispute than the application of clear rules to given fact situations. Secondly, because of the limits of the conceptual tools he had to hand, Llewellyn could not define law in terms of what the court *ought* to do as opposed to what it *would* do. In *The Bramble Bush* he wrote

> "[T]he moment that you forsake the relatively solid rock of attempted prediction, you run into difficulty, and for this reason: that when you are told by anyone that a given rule is the *proper* rule (not 'an accurate prediction') you are dealing with his value judgment, based on no man knows what." (pp. 77-8)

What Llewellyn seems not to have considered is the possibility that law might be defined in terms of "oughts" which are distinctly legal and objectively determinable. Essentially he lacked the sophisticated conceptual tool of the legal norm which forms the cornerstone of the philosophy of, most notably, Kelsen. Thus, lacking this conceptual tool, considering the settlement of disputes the thing central to law, and realising that to a significant degree legal rules without more cannot give us the results of litigation, Llewellyn was necessarily driven to the rather defeatist conclusion that the law is simply what the court does.

Central to Llewellyn's thinking about law was the view that there is considerable leeway open to the courts in deciding cases. Courts are not, and cannot be, completely bound by legal rules in their determination of disputes. The leeways in the law arise in a number of ways. There is the opportunity a judge has for deciding which rule of law is relevant to a case. Where the rule arises from precedent there is the opportunity he has for determining precisely how the rule ought to be formulated. There is the opportunity he has for determining which facts are the relevant facts to which the rule ought to be applied. Without becoming involved in the question of how much leeway there is in the law, how great is the extent of judicial freedom from legal rules, it can be safely stated that in a large number of cases there is a considerable degree of such leeway. In his *Concept of Law* Professor Hart, the most important modern legal philosopher to define law in terms of rules, readily concedes this much (ch. 7).

Is it possible, however, that a concession such as that made by Professor Hart is in fact fatal to all jurisprudential theories (including his own) which define law exclusively in terms of rules?

How are decisions to be reached where there is leeway? Llewellyn said little about this in the first edition of *The Bramble Bush*. However, in the Afterword to the second edition, written 20 years later, he wrote

> "[I]t seems to me vital for students . . . to awaken not only to the fact that the rules alone do not decide any case worth puzzling about but to the companion fact, the comrade-and-brother fact, that the courts do not and cannot simply use the leeways of doctrine as they please. Put shortly, the courts are controlled by the tradition of their office with regard to the manner in which they use the leeways

> which their office opens up to them. . . . There is the felt duty to use the law for decency and justice, there is the other felt duty of the craft . . . to reach for decency and justice only *as permitted* by the law; which means among other things that the tone and tendency of rules-in-constellation may urge and even force into results entirely without concrete particular authority; and which means that the court must be very slow in consulting its own views of rightness and welfare if they differ perceptibly from those of the community; and which means most especially that *conscious* shift in the content or direction of the law is subject to the law of leeways." (p. 156)

It comes from this quotation, and it is clearly the case, that in the area of leeways there are factors which the judge ought to be influenced by and factors which he ought not to be influenced by. It would seem to be the case that if one does not wish to define law as simply what the judge does, then all factors which are relevant in telling the judge what he *legally ought to do* should be considered a part of law.

Thus it is submitted that Llewellyn perceived a real dilemma which legal positivism has not yet solved. Law cannot be defined in terms of rules which the judge ought to follow because the rules do not bind completely and there are other things which ought equally to affect his decision. Llewellyn failed to resolve this difficulty because he failed to clearly grasp the distinction between legal and moral "oughts". It is, however, suggested that he was accurate insofar as he realised that the leeways he perceived rendered impossible an accurate definition of law framed purely in terms of rules.

C. R. WILLIAMS

Foundations of the Law of Tort, by GLANVILLE WILLIAMS AND B. A. HEPPLE, (Butterworths, London, 1976), pp. xv and 182.

This small volume is an introduction to the British law of tort and a consideration of recent modifications of and alternatives to tortious liability. The main value of the book lies in the last two chapters written by Hepple covering insurance and administrative law. These two chapters provide lucid and informative discussions of current developments which greatly affect the operation of the tort system for broad segments of the population. The well organised consideration of nonfault compensation schemes proposed and enacted in other jurisdictions is valuable for both the beginning student and the layman. Additional references are provided in the appendix for the individual who wishes more detailed information.

Unfortunately, the beginner and the layman will most probably not reach the last two chapters. The first four—covering the scope of tort law, some history of selected forms of action, remedies and the concept of fault—are the unhappy result of the authors' collaboration. Unevenness in style and depth of treatment combined with poor organisation and bad grammar make reading difficult. Stylistic variations which hamper the text include changes from first to third person, alternations between narrative and question-answer, and the inconsistent use of punctuation. The use of incomplete sentences and lack of parallel structure likewise detract. Such basic grammatical errors as mismatch of verb and subject (page 33, "One of the features of the American landscape is the Petrified Forest of Arizona, where the form and shape of ancient tree remains, whilst every particle of vegetable substance has disappeared, having been replaced by infiltrating minerals.") and the failure to use the subjunctive properly (page 38, "If trespass was to the person, . . .") are clearly unacceptable in scholarly work. Poor organisation is evident from the use of discussion examples involving causes of action, defences and remedies to which the reader has not yet been exposed. The vocabulary used by the authors belies their avowed hope that the book will be useful for the beginner and the layman. The use of such words as

pleonastic (page 85), concretises (page 98), censorious (page 122) and recellulosed (page 105) can only bewilder the average reader. The authors have also chosen to use many legal terms without first defining them making the beginner's job of reading even harder. A glossary of some terms is provided at the end of the third chapter. However, the reader is prevented from using the glossary (effectively) as there is no reference to it in either the text or the index.

In addition to these problems, the authors' work is plagued with several analytical difficulties. The third chapter dealing with remedies is confusing in part because the authors fail to distinguish clearly between damage and damages until the end of the chapter. The chapter on fault is based on the authors' view that all tortious liability can be explained on negligence theory. While one can analyse liability in nuisance, trespass and *Rylands* v. *Fletcher* as the defendant's failure to comply with a legally imposed duty, the nature of the breach, the duty, and the damage covered is quite different from the breach of a duty of reasonable care resulting in damage which is foreseeable which constitutes negligence. Misleading generalisations (page 124, "Once fault is established, in however slight degree, the defendant becomes liable for all—or almost all—the damage he has caused."; page 63 ". . . and everyone knows that a repealed statute ceases to be law.") often ignore legal reality. The statement ". . . every act is necessarily willed if it is to be an act at all." (page 85) ignoring such well-known phenomena as sleep walking and epileptic fits is evidence of a lack of diligence in preparation.

For Australian and American readers, the first four chapters are of limited use and dangerous as an introductory text due to the presentation of the British position as the law without any indication that other jurisdictions take different views (e.g. recognition and applicability of *Rylands* v. *Fletcher* and the burden of proof of fault in trespass).

In this book, the authors have failed to serve well the three classes of reader they envisioned. The beginner and the layman could derive great benefit from reading the last two chapters which they will probably not see if they begin with chapter one. The advanced student is given some information in the first four chapters which he will probably skip only to find himself disappointed by the very superficiality of the last two which makes them most valuable for others. The teacher of an introductory torts course may well want to assign the last two chapters as preliminary reading before discussions on insurance and alternatives to fault-based liability. This attempt to provide a sorely needed book, a good introductory tort text, sadly falls short of its goal.

ANN PEARL OWEN

The Law Relating to Banker and Customer in Australia, by G. A. WEAVER AND C. R. CRAIGIE, (Law Book Company Ltd., 1975), pp. xxxiii and 819.
Riley's Bills of Exchange in Australia, by W. J. CHAPPENDEN AND B. BILINSKY, (3rd edition, Law Book Company Ltd., 1976), pp. xxi and 253.

Though authoritative, English texts on banking law are not without shortcomings for the Australian lawyer. For one thing they neglect Australian judicial decisions, her legislative framework and commercial practice. For another, they tend to wrap legal principles around decided cases and recite the law, rather than develop legal principles into undecided issues. Yet for two decades, since the lamentable demise of *Russell* and its progeny *Manning and Farquharson*, Australian lawyers have had to rely exclusively on English texts. No longer is this the case, for *Weaver and Craigie* will become the standard banking law text in Australia. It is superior to other texts on the market.

At the very least, this book incorporates the favourable features of other banking texts. It follows a conventional format of topics, reports all leading decisions and competently states the law. Yet it possesses additional qualities. The book includes a very useful outline of the Australian legislative framework. Decided cases are linked by an explanatory thread of legal principles and, where warranted, lucid commentary on controversial issues is provided. Moreover, the authors present their textual material by a precise, methodical yet easily digestable style of writing. It is a comprehensive and impressive text on the law of banking and one which is ideal for practitioners.

As I read this book I was reminded of four grievances I hold, though they are not intended as criticisms of this text. The first is that no text on banking law devotes enough attention to bills of exchange, cheques and promissory notes. Perhaps limitations of space preclude it. This grievance leads to the second and third. The law governing banking and commercial paper should be subjected to critical analysis on both conceptual and social planes. For example, the nature and effect of total failure of consideration on bills of exchange is glossed over in all texts. And few have challenged the discriminatory protection from liability enjoyed by banks in Australia. The fourth point is one which is being nourished by the courts. Where a duty of care is imposed on banks, the standard of care is gauged by reference to the "reasonable banker". This is frequently translated into the commercial practice of bankers, which loses sight of the objective standards that banks ought to observe. Instead it converts a duty on the bank to adopt reasonable measures of care into a duty on the bank to do no more than pursue commercial practice but to do so carefully. The distinction is illustrated in *Weaver and Craigie* where (p. 503) they suggest that a decision requiring banks to authenticate the credentials of a customer opening an account would be an anachronism because the banks do not in practice observe such procedures. This would confer almost total immunity on the collecting bank. Despite this specific difference of opinion it is pleasing that the authors have moulded the law into the context of Australian commercial operations.

I commend this book to practising lawyers. Rarely will they need to look beyond it and if they do, they will be hard pressed to find the answer.

Chappenden and Bilinsky focuses upon the law governing bills of exchange, promissory notes and cheques as it appears in the Bills of Exchange Act 1909. Its scope, therefore, should meet one of the objections raised above, namely, the need for a concentrated study on commercial paper. However, the format of this text, being the annotation of the Act, has severe limitations. No matter how detailed annotations may be, they do not supply the necessary explanation of principle, conceptual analysis and interaction of legislative sections. Yet because the current legislation is tantamount to a code, textual annotation is a useful source of reference to practitioners, as testified by the popularity of *Riley*, now in its third edition. And it is no fault of the authors that our legislation requires reorganization to reflect the modern use of commercial paper in domestic and international spheres.

This text is complementary to *Weaver and Craigie*. Together they constitute the Law Book Company's service to practitioners on banking and allied law. And it is quite a formidable service, indeed.

C. W. O'HARE