The Enforcement of Morals, by PATRICK DEVLIN, Fellow of the British Academy. (Oxford University Press, 1965), pp. i-xiv, 1-139. Australian price $4.12.

This is a collection of lectures, some of which have been published before. Chapter 1 ('Morals and the Criminal Law') is a reprint of Lord Devlin's 1959 Maccabaean Lecture, then entitled 'The Enforcement of Morals', which has provoked a lively controversy with Professor H. L. A. Hart[1] as the main critic of Devlin's now well-known thesis. Two other chapters on the same theme have also been published before.[2] The novel interest of the present collection lies mainly in chapter 7 entitled 'Morals and Contemporary Social Reality' (a hitherto unpublished lecture on the same theme), and the lectures on 'Morals and the Law of Marriage' and 'Morals and the Law of Contract' delivered by Lord Devlin in 1961 and 1962.

The lecture 'Morals and the Law of Contract' begins with a summary of the law concerning fraud, harsh and unreasonable bargains and statutory protection against the imposition of unfair terms. Devlin then deals with the refusal by the English courts to enforce contracts for illegal or immoral purposes.[3] After commenting that 'no one, I think, can doubt that this is the right principle to apply to acts which are really criminal or immoral' (53), he goes on to argue that injustice can result from the courts' refusal to enforce contracts where only minor statutory offences are involved. He insists that unenforceability should be 'confined to the direct consequences of the wicked act' and not applied to collateral transactions. This view reflects Lord Devlin's wider concern that the civil courts should be used only for the purposes of compensation and prevention of damage and not for punitive purposes.[4] He thinks that the refusal to enforce immoral contracts can be justified only on the ground that 'the public display of litigation about vice in the course of the daily business of the courts and its reception at the seat of justice on the same terms as virtue would weaken the respect on which moral standards depend' (59). He makes no specific suggestions for reform of the law concerning immoral contracts, and in his treatment of this subject, as of others in this book, he shifts between talk of 'vice' and 'immoral conduct' in the sense of breaches of what he calls 'the common morality' (i.e. generally accepted moral rules) and 'vice' in the sense of breaches of 'the moral law', an expression which he

[1] E.g. *Law, Liberty and Morality* (1963); 'The Enforcement of Morality' (Lecture II in *The Morality of the Criminal Law* (1965)).

[2] Chapter 5, published as 'Law, Democracy and Morality', (1962) 110 *U.Pa. L. Rev.*, 635, and Chapter 6 published as 'Mill on Liberty in Morals', (1964) 32 *U.Chi.L.Rev.* 215.

[3] His assertion that 'a landlord who discovers his lodgers are living in sin must turn them out or else rely on their sense of honour for the rent' (52) is one of his many exaggerations.

[4] E.g. *Rookes v. Barnard* [1964] A.C. 1129, followed in *Uren v. John Fairfax & Sons Pty. Ltd.* [1965] N.S.W.R. 202; *H. West and Sons Ltd. v. Shephard* [1964] A.C. 326 (Lord Devlin's dissenting judgment was recently followed by the High Court in *Skelton* v. *Collins* (1966) 39 A.L.J.R. 480).

never explains though his frequent references to ' sin ' indicate that it has a religious basis in his thinking.

In ' Morals and the Law of Marriage ' he suggests that divorce proceedings should be divided into two distinct stages—

(a) an application for an order for judicial separation. This, he says, would be a ' *lis inter partes* ' not involving ' the public interest '.

(b) an application by one or both parties for a licence to re-marry. The granting of this decree, he argues, does involve ' the public interest ' and should be in the ' unfettered discretion ' of the courts.

He suggests that the criteria for the exercise of the discretion in (b) should be the ' sincerity ' of the parties and whether ' the public interest ' would be injured by permitting a fresh marriage (75, 79), and says that ' even now the moral sense of the community would support the refusal of a decree when it appeared to the court that marriage was being treated as no more than a licensed *affaire* ' (76). In Australia a decree can be refused in such circumstances under s. 37 (1.) of the *Matrimonial Causes Act* 1959-1965 or in the exercise of the court's discretion where the petitioner has committed adultery. (A decree was in fact refused in such circumstances by Kinsella J. in *Tapp v. Tapp & Mann*[5] in the exercise of his discretion under the former N.S.W. legislation.) However, as the law now stands, a court cannot both keep the petitioner out of further matrimony *and* permit the respondent to re-marry. Devlin's suggestion that the issues of divorce and permission to re-marry should be separated therefore deserves serious consideration.

However, Devlin seems unaware of the dangers of giving an ' unfettered discretion ' to the courts in these matters. It will probably be some years before one can tell whether the criteria in s. 37 (1.) of the *Matrimonial Causes Act* 1959-1965 were expressed too broadly. We have already seen how its imprecise terms have been relied upon by some judges to refuse divorces where the judges have been, in the opinion of many people, unduly sympathetic to the religious susceptibilities of respondents.[6] Moreover, courts with an unfettered discretion might not only give undue weight to religious beliefs, but might give excessive weight to the ' guilt ' of the person applying for the ' licence to re-marry ' and the divorce courts would thereby be used, not merely for the legal termination of marriages that have in fact broken down, but also for punishing ' guilty ' parties by refusing permission to re-marry.

Although Devlin does comment that the acceptance of divorce by the prevailing ' British morality ' can ' afford a sound moral basis for our law ' (79), he asserts that the refusal of permission to re-marry, even where the first marriage has been childless, is not an interference with

[5] (1960) 78 W.N. (N.S.W.) 122.

[6] But see now *Painter v. Painter* (1963) 4 F.L.R. 216, discussed by A. Cirulis in (1964-65) 1 *F.L.Rev. 155* and by Stone in his *Social Dimensions of Law and Justice* (1966) 310-312.

freedom: ' a society which permits no divorce at all may still properly regard itself as a free society ' (78). This use of ' free ' would be regarded as very strange by a person wanting to re-marry after the failure of his first marriage, at least if he or his intended spouse were unwilling to face the problems involved in extramarital cohabitation though it is, as Devlin remarks (77), a course legally available to them. Devlin's argument in support of his contention has no merits. Despite his attempts to use secular language, he seems unable to see the problem except from a religious point of view of the kind that accounts for the absence of divorce in countries such as Italy.[7] He says that a restraint on freedom of contract ' should not be imposed unless it serves some important social purpose. The decision whether it does or not is a political and not a moral one. That means that in a democracy it must, broadly speaking, accord with the will of the majority. Society has a right therefore to define the status of marriage in accordance with the ideas of the majority and to refuse to confer it upon those who do not conform.'

' A society which permits no divorce at all may still properly regard itself as a free society. If the general feeling in that society, whether it springs from a religious source or from any other, is that marriage is something which ought to be dissolved only by death, then that is the sort of marriage that that society is entitled to have.' (78). But this is not the version of democratic theory that is usually accepted, and one suspects that Devlin would not hold to his version if the majority came to hold different views from those which he believes them now to hold, especially if they departed substantially from ' Christian morality ' (whatever that may mean). Devlin seems unaware of any concept of ' freedom ' based on the 'pluralist ' approach of making divorce available to those who have no religious or other objection to it.

Devlin ends this lecture by advocating, as he does in several other lectures, a ' clean break ' (85) between the Church and the Law. However, he still insists that religion is essential to the institution of marriage, and makes some surprising generalisations about the actual social value and function of Christianity. It would have been better for him to recognise that relations between ' Christian morality ' and the law are not capable of any useful discussion in terms of such assumptions and generalisations.

Most of what Devlin says in the fifth and sixth lectures is an elaboration of his thesis in the 1959 Maccabaean Lecture which has already received much attention. The many detailed criticisms that have already been made will not be added to here, but his grotesque views about the position of moral dissenters in a democratic society do deserve special mention. In his view, when the criminal law is used against conduct that the majority thinks immoral, the law ' winnows ' (115) the honest moral dissenters from those who do not really reject ' the common morality '

[7] A Bill to allow divorce on very restricted grounds was recently introduced into the Italian Parliament by a Social Democratic Deputy but it is reported to have ' aroused strong criticism from the Roman Catholic Church ' and further discussion has been postponed ' indefinitely ' : *Canberra Times*, 7 May, 1966.

but who are merely too weak-willed to comply with it. To ensure that only genuine moral dissent is put into practice it seems that we must have martyrs.

The most recent lecture in this book is a reply to Hart's *Law, Liberty and Morality* in which Hart argued that some of the examples relied upon by Mr. Justice Stephen and Lord Devlin are not really examples of the enforcement of morality 'as such'.

Hart takes the view[8] that the more 'immoral' offender is not being punished simply because he is more 'immoral' than the other, but because his greater 'immorality' is a relevant difference to be taken into account in the interests of 'justice and fairness'. However, Hart gives no convincing argument as to why moral differences should be accepted as relevant; apart from some minor utilitarian grounds such as the prevention of moral confusion, all he shows is that moral differences are, in fact, generally accepted as relevant. As his argument stands, he has left himself open to some of the criticism that Devlin makes.

Devlin argues (128-131) that the extra punishment imposed on the more 'immoral' offender is, as Mr. Justice Stephen maintained, a use of the criminal law against 'immorality as such'. However, Devlin's argument is rebutted if it is possible to show that all generally accepted gradations of punishment are justifiable on utilitarian grounds more substantial than Hart's minor points about avoiding moral confusion and bringing the law into disrepute. The examples given by Stephen and quoted by Hart and Devlin are certainly not examples of enforcing morality 'as such'. In the example quoted by Hart[9], the 'offender of rank and education' has apparently instigated the crime. On utilitarian grounds instigators are generally punished more heavily than offenders who have been incited. Again, more information would be needed about the kind and circumstances of the crime in such an example before deciding upon the appropriate punishments. For example, take the example of shop-lifters of 'rank and education' and 'ordinary' shop-lifters; the latter are usually regarded as less 'immoral' than the former. Often the former get lighter sentences on the grounds that their conduct is not likely to be repeated and that there is less need for heavy sentences to deter other people of similar status. In the example from Stephen which Devlin quotes as a case of 'punishment for moral depravity and nothing else' (130), it is implied that the thief has taken advantage of his friend's trust, and there are utilitarian grounds for making punishments of trusted friends and employees heavier than punishments of people against whom other means such as locks and burglar alarms are available to make thefts more difficult. The relevance of greater 'immorality' can only be tested by taking, for example, cases of thefts by two persons from a third person who is the trusting friend or employer of only one of the offenders, and where the friendship or employment has not in any way facilitated the theft. It is very unlikely that any but the

[8] *Law, Liberty and Morality* (1963) 34-38.

[9] *Op. cit.* 35.

most moralistic of judges would impose a heavier penalty on the friend or employee on the grounds given by Stephen and Devlin. Most people would say that, although he is more ' immoral ', that is not relevant to the crime and hence is not relevant to the punishment.

In order to justify the illegality of certain conduct (e.g. euthanasia) Hart extended Mill's formula and resorted to a notion of ' physical paternalism '.[10] Devlin claims (135-6) that this extension commits Hart to support ' moral paternalism ' as well, that is, the punishment of conduct that society believes to be *morally* harmful, and that this is the same as ' the enforcement of the moral law ' (136-7).

Devlin's argument that no line can be drawn between ' physical paternalism ' and ' moral paternalism ' begins with an argument based on euthanasia and assaults for masochistic purposes. He says it ' hardly makes sense ' to argue that the law, in forbidding masochism and euthanasia, is concerned only with the body of the person concerned and not all with his morals—in the case of euthanasia his ' moral decision to seek death ' (135). This view is open to several objections. First, it does seem sense, at least to many non-religious people, to deny that consent to euthanasia and consent for masochistic purposes are immoral (whatever else such consents may be). Secondly, many who would concede that such consents are immoral can sensibly deny that the punishment in these cases is to any extent based on that ' immorality '. Devlin's way of looking at these situations is, to say the least, very eccentric. Most people would view the problem as being whether, where one person has killed or physically ' injured ' another, the consent of the latter should be a defence, and most would say that the main difficulty is that of ensuring that consents are ' genuine ' and well-considered. A refusal to allow consent as a legal justification because of the difficulties of ensuring ' genuine ' consents and a consequent assent to punishment for inflicting the physical ' injury ' surely does not commit one to punishing solely for ' immorality ' where no physical injuries are involved.

Devlin goes on to claim that euthanasia and masochism (by which he presumably means assaults consented to for masochistic purposes, and the instigation, aiding and abetting of such assaults) are ' as good examples as any that could be selected to illustrate the difficulty in practice of distinguishing between physical and moral paternalism ' (135). But they are examples involving physical ' injury ' : how can they possibly be good examples to rebut the proposition that there should be no paternalistic intervention where there is no physical injury as, for example, in cases of homosexual conduct, or the distribution of pornography, or most cases of abortion by qualified medical practitioners ? Again, Devlin says ' no father of a family would content himself with looking after his children's welfare and leaving their morals to themselves '. But just because legal intervention against conduct resulting in physical injury (e.g. laws in respect of narcotic drugs) is often described as ' paternalism ' it does not follow that the State must be allowed to

[10] Hart, *op. cit.* 34-38.

do with adults everything that parents would or should do with their children. Furthermore, Devlin argues that ' the terms in which Professor Hart justifies the sort of paternalism he advocates lead to the same conclusion ' (136). He quotes Hart's reference to the ' general decline in the belief that individuals know their own interests best ' and says that ' there can be no reason to believe that if unable to perceive their own physical good unaided, they can judge of their own moral good ' (136). Even if this is conceded (whatever ' moral good ' may mean), Devlin does not explicitly bridge the gap between that proposition and his conclusion that it is proper to enact criminal laws for the sake of others ' ' moral good '. What is needed is the totalitarian premiss that the criminal law may properly be used in respect of anything thought to be for the ' good ' of individuals. This is the very conclusion that Devlin is trying to establish and there is no reason to accept such a premiss. Devlin overlooks, or refuses to recognise, the liberal attitude : ' We say that those individuals are acting contrary to (what we think is) their moral good, but we value the liberty of individuals to make their own decisions on such matters, provided their conduct is not shown to result in harm to others (directly or indirectly) or physical injury to themselves which they would ultimately regret '.[11] This approach is not effectively countered by anything Devlin has said. (His fanciful or confused argument, for example, that the ' existence ' of society is jeopardised by ' immorality ' has been adequately dealt with elsewhere).

Devlin continues by quoting Hart's reference to the problem of ensuring that consents are genuine and well-considered. In a cryptic dictum Devlin comments : ' These words, it seems to me, might almost have been written with homosexuals in mind. It is moral weakness rather than physical that leads to predicaments when the judgment is likely to be clouded and is the cause of inner psychological compulsion.' (136). His references to homosexuals show that he is not putting forward the tenuous argument that the criminal law should be used to develop ' moral strength ' in order to withstand the temptation to consent too readily to death or *physical* harm. Yet if he is only saying—as his reference to homosexuals indicates—that it is ' moral weakness ' that accounts for people succumbing to actions inimical to their ' moral good ', this is not an argument for making the ' immoral ' conduct a criminal offence.

Throughout Devlin's treatment of ' moral paternalism ' there is an unfounded assumption. When he argues (133-7) that not only is it impossible to stop at ' physical paternalism ' but that it is impossible to stop short of ' complete paternalism ', he defines the latter as paternalism ' in respect of all that makes a man better and happier ' (133). He does not distinguish laws to make men ' better ' from laws to make them ' happier ' apparently because he assumes that the former are

[11] Whether, in the event of a conflict between ' Christian morality ' and ' the common morality ', Devlin would adhere to his present views or whether he would adopt some form of liberalism, or some form of authoritarianism for the ' Christianly moral good ' of the ' vice '-ridden majority, is an interesting question. If he would not adhere to his present views we would be entitled to question the sincerity of his philosophy.

necessarily laws to make them 'happier'. It is partly this assumption that accounts for the confusion of his final pages. As a verbal matter, of course, people who think conduct is 'immoral' cannot allow that it makes the person concerned 'better'; Devlin is therefore strictly-speaking correct in saying that they cannot allow that it makes him *better and happier*.[12] But 'immoral' conduct (in the sense of conduct generally thought 'immoral') usually does make the participants 'happier', and laws to prevent 'immorality' are hardly laws to make them 'happier'—at least in the short-term. On the contrary, moral and religious persecutors usually have no concern whatever for the happiness of the victims according to the wants of the victims themselves.[13] In some cases it might be shown that, although 'immorality' involving no harm to others leads to short-term happiness, it results ultimately in a preponderance of unhappiness for the participants. In most cases, however, this is clearly not so. For example, it could hardly be maintained seriously that 'immoral' sexual conduct in private between consenting adults generally results in their ultimate unhappiness; the use of the criminal law to prevent this 'immorality' cannot therefore be said to have their ultimate happiness as its aim. Again, the politicians and officials who take action under the *Customs Act* 1903-1963 (Cth) and other legislation to prevent adults from obtaining what are called 'blasphemous, indecent or obscene' works[14] for their own use could not seriously argue that they are doing it to prevent some eventual balance of unhappiness to those people. (Nor could it seriously be argued that this legislation is necessary, *and no more than necessary*, to protect children against alleged 'corrupting' influences, or to safeguard readers and film-goers against unanticipated offence to their moral or religious beliefs. Nor can the laws which are the subject of the Devlin-Hart debate be justified on the ground that they result in a generally 'happier' society than would exist without those laws. Attempts to give such utilitarian justifications for these laws usually rest on fanciful propositions about the effects of the criminal laws concerned, including the consequences of repealing them.)

These are only some of the reasons why Devlin's arguments for going to the extent of 'complete paternalism, physical and moral' are unacceptable. But are there any other arguments that would support his conclusion? There seem to be no reasons that are any more persuasive than those which Devlin has spent several years in putting forward. And Mr. Justice Stephen's argument that no reasons need be given—that society is simply entitled to persecute the 'grosser forms of vice' simply because they are 'vice'—is an even less acceptable view.

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[12] *Op. cit.* 135, and 132-3 where he gives an odd interpretation of Mill's view (*cf.* Hart, *op. cit.* 31).

[13] Of course, such interference used to be, and in some quarters still is, rationalised as being for the sake of the 'real' happiness of the victims, or for the sake of their supposed happiness in some 'after-life' in which the victims do not believe. Even Devlin does not resort to these arguments in his book.

[14] *Customs* (*Prohibited Imports*) *Regulations* reg. 4 and Second Schedule (Item 22), and reg. 4A; *Customs* (*Cinematograph Films*) *Regulations* reg. 13; *Post and Telegraph Act* 1901-1961, ss. 43-44.

If there are no acceptable reasons *for* 'complete paternalism, physical and moral', there are some *against* it. Against any extension of paternalism beyond 'physical paternalism' to other kinds of 'felicific paternalism' is the difficulty of deciding whether any conduct would ultimately and generally result in an overall balance of 'unhappiness' for the participants. These difficulties seem, however, to be no greater than the difficulties in dealing with conduct that harms other people: that harm and the harm resulting from the use of the criminal law against the conduct in question have likewise to be brought into an 'assessment of the balance of harm'.[15]

The most famous objection to paternalism is that given in Mill's *On Liberty*. Where no harm to others is involved[16] Mill urged that individual liberty should be accepted as an absolute value, overriding all policies that would follow from the unqualified application of Bentham's felicific calculus.[17] Contrary to Mill's view it is now generally accepted that some paternalistic inroads on liberty are desirable at least where they take the form of 'physical paternalism', but these might be accepted as involving consequences that even the persons concerned would ultimately not want (e.g. drug addiction), whereas outside the area of physical injury it is usually impossible to generalise with any confidence about what people would ultimately want or regret[18]. In any case, even if some wider 'felicific paternalism' were accepted it is doubtful whether the *criminal* law should ever be used to implement it. Assume that, after an assessment of all relevant factors, it is decided that compulsive gambling, or prostitution, or abortions (even where there is no physical injury involved) eventually do cause an ultimate preponderance of misery to the gamblers, prostitutes and women having abortions. There would then be some preliminary basis for exercising 'felicific paternalism'. However, there would then arise the question stressed by Devlin himself in his original lecture (20). Taking into account all its consequences, especially the misery inflicted on those apprehended for offences, should the criminal law be used? Even if the law did succeed in producing some greater ultimate happiness to the people deterred from the conduct in question, is this offset (a) by the cost of administering the criminal law to the extent necessary to have deterrent effect, (b) by the unhappiness and often misery to those fined and imprisoned, and (c) by the inevitable injustice caused by the fact that only some offenders can ever be caught? The answer would almost always be that it should not be used. It is extremely likely that the laws against homosexual conduct, abortion, and many of the censorship laws would be abolished

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[15] Hart, *The Morality of the Criminal Law*, 47-9.

[16] 'Direct' harm in Mill's theory: *On Liberty* (Everyman edition), 75.

[17] 'He cannot rightfully be compelled ... because it will make him happier ...', *op. cit.* 73.

[18] What is in substance a kind of 'psychological paternalism' was undertaken by the Victorian Parliament with scarcely any public dissent in the *Psychological Practices Act* 1965 (Vic.) on the ground that warnings were not a sufficient protection against psychological and other alleged dangers of 'Scientology', and that it should therefore be banned.

or substantially modified if only utilitarian criteria were used and all questions of ' immorality ' ignored.

After some unconvincing remarks about the offences of cruelty to animals and bigamy (137-8)[19], Devlin points out in the final pages of his book that Hart has not yet answered his original claim that the punishment of incest, bestiality, abortion, brothel-keeping and the distribution of pornography can only be justified on the grounds of the immorality involved, and that these examples cannot be ' shirked indefinitely ' by any supporter of the Mill-Wolfenden-Hart theses.[20] But these supporters can (and many do) claim that where the retention of these offences cannot be justified on the grounds of cruelty to animals, harm to other persons or to the offender himself other than merely ' moral harm ', these offences should be abolished. Of course, there are practical difficulties, for example, with the offence of living off the earnings of prostitutes. The Wolfenden Committee found that in some, though not all, of these cases women are being exploited. If the criminal offence were limited to cases of ' exploitation ' there would have to be an investigation on each prosecution to determine whether the particular woman was being ' exploited '. In many cases, practical considerations such as these require that offences be expressed in wider terms, though every care should be taken to avoid this wherever possible.

In this final lecture Devlin asserts that ' there is only one crime, that of homosexuality, that is known for certainty to be within the private realm ' (128). But even in England some heterosexual conduct by consenting adults in private is probably still criminal[21], and in Australia prosecutions have succeeded in recent years under statutory provisions[22], sometimes resulting in appalling sentences solely because of the judges' ' moral ' indignation at the conduct of the accused.[23]

If the judges who impose such sentences, or legislators and officials concerned in the making and administration of the criminal law in Australia, think they find support in Lord Devlin's book, or in the views expressed in recent years by Lord Denning[24] and Lord Goddard[25] on these matters, they should not be misled by the eminence of these people as judges but should certainly read more widely[26] so that when they

[19] It is surprising, as Glanville Williams has recently remarked in [1966] *Crim. L.R.* 132, that Devlin has not revised his lectures despite the many cogent criticisms of his Maccabaean Lecture. On specific crimes. G. Hughes in ' Morals and the Criminal Law ' (1961) 71 *Yale L.J.* 662 makes some valuable objections to Devlin's original lecture.

[20] Hart's latest publication, *The Morality of the Criminal Law* (1965), consists of lectures given in Jerusalem in 1964 before the appearance of Devlin's book.

[21] *R. v. Jellyman* (1831) 8 C. & P. 604.

[22] E.g. *Crimes Act*, 1900 (N.S.W.), s. 79.

[23] *Veslar v. R.* (1955) 72 W.N. (N.S.W.) 98 (Court of Criminal Appeal).

[24] Referred to in Hart, *op. cit.* 38-9.

[25] *The Economist*, May 29, 1965, 1012.

[26] Devlin himself admits in his Preface (vi) that he ventured into the realm of secular philosophy in his Maccabaean Lecture to the British Academy without having read Mill's *On Liberty* from beginning to end, and that he had not even heard of Stephen's *Liberty, Equality and Fraternity*.

exercise their powers to send people to gaol for 'immoral' conduct they will at least be aware of the issues involved.[27] If they do read more widely they are unlikely to come across many books in which so many objectionable ideas are presented with so much confusion as in Lord Devlin's lectures.

D. J. ROSE*

Jesting Pilate and other papers and addresses, by the RIGHT HONOURABLE SIR OWEN DIXON, O.M., G.C.M.G., D.C.L., (Hon.) Oxon., LL.D. (Hon.) Harv., LL.D. (Hon.) Melb., LL.D. (Hon.) A.N.U. A Justice of the High Court of Australia 1929-1952 and Chief Justice 1952-1963, collected by JUDGE WOINARSKI, M.A., LL.D. (Melb.). (The Law Book Company of Australasia Pty Ltd, 1965), pp. 1-250.

There are seventy five prepared papers and addresses 'off the bench' and four addresses 'in court' in this volume. It is difficult to believe that any lawyer interested in the processes of the legal mind will not find the whole utterly fascinating. It is, if I may coin a phrase for the occasion, a book 'you cannot put down'. Whether you experience violent disagreement or humiliating inability to comprehend, the attraction accumulates. You experience the unwavering if ignoble concentration of the rabbit caught in the glare. You are surprised to find it is a more pleasurable intoxication than that resulting from alcohol or (I suppose) opium. And perhaps, if reviews are intended as a guide for other readers, this is as much as needs be said.

It is comforting to think that the rabbit, if he escapes from the glare, feels some interest in analysing his experience, albeit with a deal of self-centred head shaking and occasionally an all over reconstruction from nose to tail. But it must be confessed that an accurate estimation of the glare is not the easiest task for a rabbit.

In this particular case my chief impression is of the intense concentration of the writing. This also was frequently true of the judgments of Dixon J. and Dixon C.J. It is rather surprising to find the same character repeated in papers designed for oral exposition to laymen. No doubt some general impact was felt by those listeners who could concentrate for the whole period. But many must have consoled themselves with the reflection that they would understand much more when they saw it all in print. I can recall a mild personal complaint of

[27] It is interesting to note that s. 81A of the *Crimes Act*, 1900 (N.S.W.) was enacted as recently as 1955. The Attorney-General stated that it had been approved by the District Court judges, the Commissioner of Police and the Bar Council (*N.S.W.*) *Parliamentary Debates* (*Third Series*) *Session* 1954-5, 3230) and it was enacted with scarcely any debate except some vigorous dissent from Dr. L. J. A. Parr, M.L.A. This new section was designed *inter alia* to make N.S.W. law coincide fully with s. 11 of the *Criminal Law Amendment Act* 1885 in England where, in 1957, the Wolfenden Committee recommended the substantial abolition of that very offence.

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