Running through Chapter XIV is an indictment of punishment as a legal sanction. The author, assuming that criminal sanctions are necessarily punitive, seeks therefore to cut down the area of operation of the criminal law. But there are other approaches to the nature of criminal sanctions. The author notes these (pages 242-247), but under the common question-begging title of 'Purposes of *Punishment*'. It surely cannot be impossible to regard rehabilitation of the corrigible, together with isolation of the serious offenders who are incorrigible, as a non-punitive sanction. The author disagrees, on the ground that even the kindest rehabilitation involves interference with the liberty or behaviour of the subject. But the discomfort or even pain with which we visit the subject of treatment is not punishment in the sense of punishment-for-its-own-sake, or retribution. As well might we say that the doctor and the dentist punish us in their sincere efforts to treat us. I think this analogy is sound and might be extended if space permitted.

Many will agree with Professor Hall that punishment should be inflicted only in cases of moral guilt. But some will see solutions different from the reactionary retreat proposed in this volume.

Casting back through this review, I am disappointed to find it more critical than it was meant to be. But the work is of such stature that not only can it well withstand, but it will certainly invite, a good deal of critical analysis. One feels the author would wish this. For he has achieved a remarkable blending of three controversial fields—philosophy, sociology and criminal law—a blend which in the Second Part adds up to the interdisciplinary study of criminology. And none would see more clearly than the author the full extent of unsettlement in the field he has broached.

STANLEY JOHNSTON*

Modern Company Law, by L. C. B. GOWER, LL.M. (London), Cassel Professor of Commercial Law in the University of London. 2nd ed. (Stevens and Sons Ltd, London, 1957), pp. i-xlvii, 1-631. Price £3 10s.

Professor Gower, the most substantial modern disseminator of company law ideas, has probably earned himself a place beside the great textbook writers of the Oxford school in the class of Anson, Dicey and Cheshire. But, unlike the works of some of these, *Modern Company Law* is so soundly practical that it is likely to become as much a standard reference of the enterprising company planner as are *Buckley*, *Palmer* and *O'Dowd and Menzies*, although not being in all respects an alternative to them.

Shortly after this work became available in Australia, it was learned that the Victorian Companies Act 1938 was to be reviewed by Parliament. It was then decided that a discussion of the work in this *Review* should await the passing of the legislation so that, rather than receive a conventional analysis, the book might be shortly evaluated in the light of its particular utility to the Victorian lawyer having to order his affairs under the new Act.[1] It is for this reason that it is being reviewed over eighteen months after its publishing date.

When the first edition of the book was published five years ago, its intrinsic merits, style and arrangement were so extensively and thoroughly reviewed in legal journals that there would be little purpose in wholly repeating the performance here, for there has been no substantial altera-

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[1] Companies Act 1958 (No. 6455), passed 2 December 1958.

tion in the presentation of the matter. The text has been extensively recast, corrected and brought up to date as at 1 July 1957, but the central purpose of the book, to provide against a practical background an historical introduction to, and a relatively severe and searching analysis of, the essential principles of common law and equity affecting companies today, is unchanged. It retains the attractive attribute that it can be read as a lively commentary on companies and not merely as a tasteless catalogue of rules.

Inasmuch as the Victorian Companies Act 1958 adopts and adapts much of what has in England been the law for ten years, it may fairly be said that most of the book provides a general up-to-date guide to company law in Victoria. But Professor Gower does not claim to provide a section-by-section exposition on complexities of statutory interpretation; the discussion, though pointed, is not in any sense specific; the book is not intended to be a collection of single instance precedents, and the emphasis is on the interpretation of ideas rather than of words. If this carries the disadvantage that one cannot find an answer to every problem which may arise in practice, it is offset by the author's attempt to provide a far more fundamental understanding of the subject than could be had from pure familiarity with a statute.

It is, perhaps, a fair comment on the new Victorian Act that its changes are concerned less with the day-to-day internal running of companies than with the external protection of their members and creditors. Under it, Parliament no doubt hopes the facile loquacity of the shady promoter will be seldom heard and prospectus promiscuity reduced to petty proportions. In view of this, the most immediately rewarding aspect of this book for the reader desiring to modernize his company law knowledge in the light of the new Act, rather than to begin a study of the subject as a student, is the discussion in part five entitled 'Investor and Creditor Protection', to which two new chapters have been added. Here, the author devotes 200 pages to meetings and resolutions, directors' and controlling shareholders' duties and their enforcement, reconstructions, publicity, accounts and audit. Prospectuses, which might logically be expected to appear in this part, are dealt with under the heading 'Formation and Flotation of Companies' in part three. As with the late Professor Merrick E. Dodd, of Harvard, Professor Gower is extremely interested in minority members' rights. Equipped with his and Wedderburn's treatments[2] of the delicacies of *Foss v. Harbottle*[3] and its descendants, one has the finest analysis available of the rule it created.

Section 94 of the Companies Act 1958 is an interesting new provision borrowed from England providing for the grant of a discretionary judicial remedy in cases of oppression. It has produced few reported cases yet in England, so that the discussion (pages 541-544) of several South African and Scottish cases dealing with equivalent provisions should provide a particularly valuable approach to the Victorian section.[4]

Professor Gower considers the principle of disclosure one of the most important safeguards available to investors in and creditors of a com-

[2] [1957] *Cambridge Law Journal* 194 and [1958] *Cambridge Law Journal* 93. The usefulness of these treatments is not diminished by the fact that the two writers are not always in entire agreement.

[3] (1843) 2 Hare 461.

[4] Since the book was published, the House of Lords has decided the most important authority hitherto on the equivalent English section (210), *Scottish Co-operative Wholesale Society, Ltd v. Meyer & another* [1958] 3 All E.R. 66; [1958] 3 W.L.R. 404.

pany, and he examines the means by which company publicity is obtained. But the right of outsiders to pry into the company's indoor management, and their right, for example, to inspect at the registered office copies of the memorandum and articles, the minute books and accounts, is carefully distinguished. To this, the rule in *Royal British Bank v. Turquand*[5] is cited as a corollary (page 414) since, argues the author, the limitation on the rights of third parties is normally coupled with a freedom from any obligation to investigate. The reasoning of Slade J. in the latest important case on the subject, *Rama Corporation Ld v. Proved Tin & General Investments Ld,*[6] leads one to wonder whether this argument is perfectly sound, for the current interpretation of the rule apparently lays great stress on the outsider's knowledge, or lack of it, of the company's so-called 'public documents'. Professor Gower shows no internal inconsistency, however, for in his brilliant and lucid discussion of the *Turquand*[7] rule he frankly disagrees with the reasoning in the *Rama*[8] case (page 152 n.) and supports the 'ostensible authority' doctrine of a company's liability for the unauthorized acts of its servants in the circumstances of that case rather than the 'knowledge of public documents' theory favoured by Slade J.

The new Act has not gone the whole way with Professor Gower's suggestion that the *ultra vires* rule has outlived its usefulness and should be abolished. It has, however, followed South Australia, Western Australia and New Zealand in adding a schedule of incidental and ancillary objects and powers which each company registered after the passing of the Act is to have in the absence of an express contrary exclusion. This is a far cry from the attitude of severe censure taken some forty years ago by Lord Wrenbury[9] towards the then growing practice of enumerating, in the objects clause of a company's memorandum, a profusion of powers. The author argues that the *ultra vires* rule has 'ceased to be any real protection to either members or creditors; on the other hand it remains as great a trap as ever for the unwary third party' (page 93). If this is sound it is difficult to defend the retention of the rule. If it is one day abolished, there may be a strong case made out for the abolition of the distinction between memorandum and articles altogether, particularly since the new Act now enables the alteration of the objects clause for any purpose, the procedure required to achieve such an alteration is greatly simplified, and the further provisions in the memorandum are alterable with only a little more formality than the articles.

Numerous other amendments, of varying importance, to the Victorian companies legislation which more or less equate Victorian and English law, and on which useful discussion is to be found in the book relate, *inter alia,* to the issue of shares at a premium (page 102), redeemable preference shares (pages 106 and 334), reduction of capital (pages 105 ff. and 563 ff.), appointment and removal of directors (Ch. 7 *passim*) and resolutions requiring special notice (page 438).

The publishers' contribution to *Modern Company Law* is technically excellent; the errors are few and the indices sufficient. Both the textbook and the new Act are distinct improvements on their predecessors through

[5] (1856) 6 E. & B. 327.
[6] [1952] 2 Q.B. 147.
[7] *Royal British Bank v. Turquand, loc. cit.*
[8] *Rama Corporation v. Proved Tin Ld & General Investments Ld, loc. cit.*
[9] *Cotman v. Brougham* [1918] A.C. 514, 523.

the coincidental adoption by those responsible for their printing of the same clear Times type.

R. C. TADGELL*

Laws and Regulations on the Regime of the Territorial Sea. United Nations Legislative Series. (United Nations Publication, New York, 1957), pp. i-li, 1-811. Price $7.

Laws and Regulations regarding Diplomatic and Consular Privileges and Immunities. United Nations Legislative Series. (United Nations Publication, New York, 1958), pp. i-xxx, 1-511. Price $5.

These are the sixth and seventh volumes of the United Nations Legislative Series. Maintaining the high standard established by the earlier volumes, they provide most useful information. Both volumes have been prepared by the U.N. Secretariat. Their principal immediate task was to assist the International Law Commission in its efforts to draw up conventions in these important fields of International Law.

Following the method adopted in the earlier volumes of the series, the material in both volumes is arranged in two parts, a first part devoted to 'national legislation', and a second part containing relevant provisions of 'treaties and international agreements'. In order to keep the size of the volumes within manageable limits, the second part does not aspire to a complete cover of all international agreements in the fields concerned, but rather to a representative selection of the type of provisions in force. The material in the first part of the volumes is particularly useful, as much of it has been difficult to obtain. The text of laws and regulations reproduced there were supplied or indicated to the U.N. Secretariat by the various governments in response to a request addressed to them by the Secretary-General. Considering this request it is regrettable that some countries have not given any information. In the case of newly independent countries which have not, since gaining independence, passed any legislation in the fields concerned, even a note or memorandum with regard to the country's attitude to the continued validity of earlier colonial legislation—as, for instance, supplied by Cambodia *(Laws and Regulations on the Regime of the Territorial Sea,* page 3)—is of considerable interest.

The volume on the regime of the territorial sea can by no means be treated as out of date as a result of the 1958 Geneva Conference on the Law of the Sea. On the most important question, that of the breadth of the territorial sea, no agreement at all could be reached at Geneva. On the other hand, with the gradual implementation of the four conventions on the law of the sea which were agreed upon at Geneva, amendments to the national legislation will result in such fields as the exercise of jurisdiction in the territorial sea, fishing in territorial waters, and other matters dealt with in the conventions.

The reviewer feels that for the great majority of interested readers of this U.N. Legislative Series in English-speaking countries, the continued inclusion of texts in the French language in these volumes is a real drawback. As translations into English of texts in all other languages have been provided by the U.N. Secretariat, why not extend this service to texts in French? Such translations would still further increase the great usefulness of these volumes.

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