criminal law theory enunciated in current English cases and textbooks. The only disappointment which I felt about Professor Hart's essay arose from the fact that he did not give us more on the same theme. But if he had done so, he would have distorted the whole framework of the book.

Among the other essays, I particularly enjoyed the discussions of 'Possession' and 'Ownership', by Messrs D. R. Harris and A. M. Honoré respectively. The former of these two pieces is slightly marred, to my mind, by the author's refusal to quarrel with any of the decisions. For my own part, I cannot see how anyone can accept *R. v. Hudson*[1] as a correct decision on larceny. And the extent to which the Court of Criminal Appeal misconceived the criminal law in that decision is fully revealed in its handling of the count for false pretences.[2] An English text-writer on criminal law may perhaps feel himself compelled to treat the case as an authority, since it has never been overruled. There is, however, surely no need for a writer on jurisprudence to accept the decision as correct. Let me hasten to add that this attitude to the authority of case law is only a slight blemish on a most illuminating essay.

I would mention one other essay, that on 'Sovereignty' by Mr R. F. V. Heuston. I am not sure that the new approach to the problem which he expounds is a sufficient guarantee against abuse of power. And the case law which he discusses is by no means new to an Australian lawyer. It is, however, most useful to have it coherently expounded as a whole. And I know of no words adequate to praise sufficiently the writer's style. This essay is a polished little gem, which of itself would make the book well worth reading.

This book provides a rich feast. It should be bought, read, and pondered, not only by students and academics, but most of all by practitioners. For it will enable them to pause for a moment in their mundane labours to scan some distant vistas; and at the same time as it proves much food for thought, it serves it up in a most palatable form.

PETER BRETT*

Essays in Constitutional Law, by R. F. V. HEUSTON, M.A. (Stevens and Sons Ltd, London, 1961), pp. i-x, 1-187. Australian price £2 19s.

In this collection of essays, Robert Heuston of Pembroke has given a wider audience the opportunity to enjoy his stimulating Oxford lectures in constitutional law. He does not pretend to have prepared a textbook. He has chosen subjects that interest him, and has lectured on them in a style which combines erudition, wit and grace, and has fortunately survived the transmutation to the printed (and foot-noted) page. It is old-fashioned stuff, as he candidly admits in his Preface, but he is right to emphasize that it is basic. It is so easy to forget that every generation of law students must learn it over again.

His opening chapter is a *bravura* piece on 'Sovereignty', full of 'quotable quotes' which give something of the flavour of the whole: 'The doctrine of parliamentary sovereignty is almost entirely the work of Oxford men.

[1] [1943] K.B. 458; [1943] 1 All E.R. 642.
[2] Reported only in [1943] 1 All E.R. 642, 644.
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It was once thought that Edward Coke might have had something to do with it, but this is no longer believed even in Cambridge'; Sir William Anson stated the orthodox doctrine of parliamentary sovereignty but 'was aghast at the prospect of being taken literally by a parliamentary majority composed of the sons of nonconformist manufacturers and Irish peasants'; Sir Thomas Erskine Holland 'discharged the duties of his chair mainly by letters to *The Times*'; Maitland, 'in whose half-sentences there is often more truth than in the whole of another man's books'. One may be permitted to note that Richard Latham of All Souls, who wrote 'the most brilliant contribution to the literature of English constitutional law since Dicey', was a Melbourne man (Ormond College) before he was an Oxford man, the son of the former Chief Justice of the High Court of Australia.[1]

Further chapters follow on 'The Rule of Law', 'The Royal Prerogative', 'Parliamentary Privilege', 'Personal Liberty', 'Civil Disorder' and 'Judicial Control of Powers'. The presentation is straightforward enough, but Mr Heuston has collected much fascinating material to illustrate his exposition and arguments. His discussion of the law on successive applications for *habeas corpus*, in which he draws attention to an Irish case of 1937[2] which has escaped the notice of both *Halsbury* and the *English and Empire Digest*, will be of particular interest to the Australian lawyer who must now assess *Eleko v. Government of Nigeria*[3] in the light of the *Hastings* cases.[4] There are, of course, points at which the Australian lawyer must be cautious in accepting Mr Heuston's statement of the law—in the chapters on 'Parliamentary Privilege' and 'Civil Disorder', for example, both areas in which Australian statute law (State and Federal) needs to be consulted.[5]

The last chapter, 'Judicial Control of Powers', is, with respect, somewhat thin. After all, Mr Heuston has here attempted to discuss the area of the law which Professor de Smith recently took 500 pages to expound and examine. Even so, there is much to be grateful for, such as those historical details of *The King v. Halliday*[6] and *Liversidge v. Anderson*[7] which are not to be found in the Law Reports and yet which illumine those famous decisions.

This, then, is most certainly a book to read with both pleasure and profit. The somewhat excessive citation of Scottish and Irish authority is to be attributed, one supposes, to Mr Heuston's well-known Celtic bias.

ROBIN L. SHARWOOD*

[1] Not, we are happy to say, the 'late' Chief Justice, as Mr Heuston mistakenly describes him on page 32.

[2] *The State (Dowling) v. Kingston (No. 2)* [1937] I.R. 699.

[3] [1928] A.C. 459.

[4] *In re Hastings (No. 2)* [1959] 1 Q.B. 358; *In re Hastings (No. 3)* [1959] Ch. 368 (Affirmed by Court of Appeal: [1959] 3 All E.R. 221).

[5] 'Rout' incidentally is not an obsolete offence in Victoria, although it is so described by Mr Heuston on page 125. The charge was brought against some allegedly disorderly youths in a suburban Court of Petty Sessions in Melbourne only two years ago.

[6] *The King v. Halliday ex p. Zadig* [1917] A.C. 260.

[7] [1942] A.C. 206.

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The Law of Agency: Its History and Present Principles, by S. J. STOLJAR, LL.B., LL.M., PH.D. (Sweet & Maxwell Ltd, London, 1961), pp. i-xliii, 1-341. Australian price £2 9s. 6d.

The Principles of Agency, by H. G. HANBURY, Q.C., D.C.L., 2nd ed. (Stevens and Sons Ltd, London, 1960), pp. i-xix, 1-235. Australian price £2 9s. 6d.

As a separate subject of English law, agency is relatively young. The word 'agent' does not appear in the index to *Blackstone's Commentaries*. When Professor Hanbury's predecessor wrote, there was learning about stewards, factors, bailiffs and attornies but the subsumption of the rules relating to those more or less distinct categories under a more general heading awaited the nineteenth century changes in the scale of trade. Paley's book which appeared in 1811 was the first treatise on agency. This was followed by the works of Kent, Wilshere, Story and Bowstead. The first editions of Professor Hanbury's book and Professor Powell's book appeared in 1952 and since then the works of Mr Fridman and, latterly, Dr Stoljar have been published. Dr Stoljar's book is of such worth as to dispel any fear that he has merely brought about a state of superabundance.

Dr Stoljar has conceived his task as 'a searching re-examination to show not only what the rules are, but why they are what they are'. In doing this he has set out 'to pay renewed attention to the historical context of the basic rules and to their logical explanation'. Basically, his book is arranged in two parts: in the first part the author deals with the external aspects of agency, namely, the legal relations of the principal to third persons and in the second part he is concerned with the relations between agent and principal. In these he covers all the topics usually treated in works on agency but with a degree of theoretical analysis seldom found in other works.

The terminology of agency law with its categories of real authority, usual authority, ostensible authority, agency by estoppel and apparent authority, has made it a complex subject. Dr Stoljar believes that there need be only the two categories: real authority and apparent authority. In this view even usual authority is only a branch of apparent authority since, strictly speaking, a person cannot have a usual authority; he can only appear to have one. He finds that the reliance by nineteenth century courts on estoppel was misplaced and that many of the theoretical difficulties can be avoided by adopting the viewpoint of a third person dealing with the putative agent. Broadly, he classifies situations of apparent agency as (i) those in which there has been a course of dealing by P which gave A an apparent authority to make P liable to T, (ii) those in which P has installed A in a position normally involving a general or managerial authority and (iii) situations in which A is in possession of certain property such as documents of title. He is concerned to show that apparent agency does not depend on estoppel but gives rise to a contract between P and T if the agent was within his real or apparent authority. To reach this conclusion he relies on an analogy with the law's creation of a contract *inter absentes* when offer and acceptance pass through the mails. He is also concerned to show that there is a contract *inter praesentes* between A and T. It is this latter contract which P can ratify in a case where A acted outside his real or apparent authority, and its