Out Lawed: Queensland's Aborigines and Islanders and the Rule of Law, by GARTH NETTHEIM, (Australia and New Zealand Book Company, Sydney, 1973), pp. 1-142. Recommended Australian Price $4.95. ISBN 0 85552 012 4.

This is not a very long book. Nor is it the kind of book about which academic reviewers can smack their lips because it is full of new ideas or because it is insightful or elegantly written or beautifully presented. None of those things can be said about this book. But it is a very important book.

As the title suggests, Professor Nettheim discusses The Aborigines Act and the Torres Strait Islanders Act 1972 (Qld). He does this by the simple expedient of dividing those statutes into topic areas (e.g. Reserves-Access, Mining, Liquor; Economic Assistance and Supervision) and then reproducing the pertinent sections, often in full. The analysis undertaken is basically two-fold—the new sections are compared to those of the previous (1965) legislation and, often, the degree of compliance of the new legislation with such charters as the Universal Declaration of Human Rights and I.L.O. Conventions is indicated. The lack of a use of polemic has worked well. What would have been a sterile approach in many other areas of law has resulted in a sick-making, dramatic account of Queensland's attitude to Aborigines and Torres Strait Islanders.

The book totally discredits those lawyers who resist Bills of Rights on the basis that in common law countries the tradition of the Rule of Law is so strong that neither judges nor legislatures would undermine it by positive action. This is the so-called theory of judicial and legislative self-restraint. Professor Nettheim establishes, in his unemotional way, that at least one of our legislatures has not exercised too much self-restraint. Examples abound. Here are some.

Until the 1971 legislation, a Director of a reserve (or his delegate) could enter the dwelling of any inhabitant without consent of the occupier, without a warrant, without reasonable belief that a felony was about to be committed. This would have remained the position in the 1971 legislation, except for a last-minute amendment. If, in 1971, self-restraint in such a matter was not automatic, the real strength of the argument is there for all to see. Under the present legislation, an aboriginal needs a permit to allow him to take up residence on a reserve. Whereas previously he could be asked to leave, even if that split him off from his family, he may now leave, without losing his right to return, for approved, temporary periods. The permit may be revoked by the Director. For those who lived on a reserve prior to the passing of the new legislation, no permit is required to stay. But, if they wish to use the court system, they need a permit. That permit is to be granted by the Director. The catalogue of horrors continues. Prior to the new legislation, the Director or his delegate had the right to manage the property of aborigines for their own good. The new legislation only permits this if the aborigines assent, unless their property was so managed prior to 1972. The deprivation of dignity this affords is spectacularly illustrated by Appendix 3, where letters from aborigines seeking help in order that they might recapture their money and, thereby, some of their independence, are reproduced.

In Court proceedings, aborigines may be forced to have the Director or his delegate appear for them, even if the proceedings involve a question of the administration of the reserve. Further, this form of legal aid will not necessarily be available if aborigines want it. What happened to the notion that every accused shall be entitled to counsel of his own choice?[1]

As a final note to this review, I merely set out, as the author has at pages 98-99, some by-laws which control the conduct of aborigines on reserves:

[1] 92-5.

Chapter 3—'All able-bodied persons over the age of fifteen years residing within the Community/Reserve shall unless otherwise determined by the Manager perform such work as is directed by the Manager or person authorized by him'.

Chapter 4.1—'A person . . . shall not . . .
(h) carry tales about any person so as to cause domestic trouble or annoyance to such person'.

Chapter 6.10—'A householder shall wash and drain his garbage bin after it has been emptied by the collector. If necessary disinfection of the bin by the householder may be directed by an authorized person'.

Chapter 8.3—'The occupier of a building shall not use the building nor permit the building to be used for any improper, immoral or illegal purpose'.

Chapter 9.3—'A person using a gate or any other opening in a fence capable of being closed shall close it unless instructed by an authorized person to leave it open'.

Chapter 10.1—'A person swimming and bathing shall be dressed in a manner approved by the Manager'.

Chapter 13.2—'A person shall not use any electrical goods, other than a hot water jug, electric radio, iron or razor, unless permission is first obtained from an authorized officer'.

Chapter 14.5—'A person shall so conduct himself in the community area and in any building so as not to annoy other residents'.

Chapter 24.3A—'Parents shall bring up their children with love and care and shall teach them good behaviour and conduct and shall ensure their compliance with these By-laws'.

And there is more, much more!

Professor Nettheim is entitled to our gratitude. His book is a most useful setting-out of sources for those who actively seek to better the aborigines' lot. But, even more significantly, its dry, matter-of-fact presentation of this legalized set of atrocities will serve to remind practitioners of law that they have a duty to the administration of justice over and above that of serving their paying clients to the best of their ability. Smug 'knowledge' that our traditions will automatically cause the Rule of Law to be respected has been proved, systematically by this book, to be unfounded. The book will also serve notice on academic lawyers that those who poo-pooh courses such as Law and Poverty, Law and Aborigines, on the basis that they are band-wagon courses, containing no real law, might well be more irresponsible than those who advocate such courses.

This is a very important book. I hope that it will be widely read.

H. J. GLASBEEK*

A Casebook in the Law of Crimes, by PETER BURNS, LL.M., (2nd Edition Sweet and Maxwell (N.Z.), 1972), pp. i-xxviii, 1-556. Price $17.85.

Despite the generality of its title, this casebook can only have been intended for use in New Zealand law schools. It contains a selection of extracts from English, Australian and New Zealand cases. Comment on the extracts is sparse. There are, however, helpful references to textbooks and periodical literature at the conclusion of each chapter. The casebook will no doubt assist in the conservation of law libraries in those law schools where it is used. It provides, for the Australian reader, a sampler of judicial prose from the New Zealand courts. No other virtue is immediately apparent.

The value of this book as a teaching aid may be doubted. My first complaint may be one merely of personal taste. But the arrangement of material seems highly

* B.A., LL.B. (Hons), J.D. (Chic.), Barrister and Solicitor (Vic.), Senior Lecturer in Law, University of Melbourne.