Property Practitioners than the total sample (46%) agreed that 'too much of my time is taken up by work which does not require a full legal training for satisfactory completion' (p. 45). But in addition, only 9% of them (compared with 20% overall) agreed that 'it would be in the public interest if specially licenced real estate agents were allowed to handle straightforward conveyancing' (p. 59). Thus while the work involved does not wholly benefit their station, Property Practitioners are apparently not willing to let go of it. This group, interestingly enough are least dissatisfied with their remuneration (p. 45) and least in agreement with lawyers advertising their specialities (p. 60). The picture of Property Practitioners that emerges from the above suggests a self-interested group at some odds with the rest of the profession.

The author's analysis of the data tends to be straightforward, however, she does provide occasional intriguing remarks. Numbered amongst these is the comment following from her finding in her first report that Victoria's lawyers 'are drawn overwhelmingly from an Australian born male population with high status family background' (p. 34). Study of the lawyer-types generated in this book indicates that there appears 'to be some channelling of those with differing class and status backgrounds towards particular work roles' (p. 36). In particular, solicitors with high-status backgrounds tend to work as Commercial Practitioners. This seems to confirm the closed-shop nature of some branches of the profession.

Overall, differing views of lawyer-types that are presented in this book constitute a considerable source of information on a wide variety of issues. The differing attitudes of barrister-types towards their articled clerkships (p. 78), the attitudes towards perceived standards of service to cliens (pp. 59, 83) and the predictions of future trends in the profession (pp. 47-53, 84-8) by lawyer-types indicate the richness of the information that is available. The book is most valuable as a source book of information, rather than a policy-oriented document. The author herself remarks at times that her data is 'extremely limited' (p. 151) or her results 'relatively crude' (p. 18), so that she cannot be definite in drawing certain conclusions. It is hoped that those who use the 'benchmark' provided by this book for future research will ensure their data collection allows them to go further than simply providing 'an exploratory overview of the profession' (p. 25).

DENNIS CHALLINGER*

Criminal Law by Colin Howard (4th ed., Law Book Co. Ltd, Melbourne, 1982), pp. x-lxi, 1-452. Cloth $32.50, Limp $22.50. ISBN 0 455 20457 8.

Having marked Melbourne Cup day in 1965, Bastille Day in 1970 and Ramadan in 1976, Professor Howard celebrates the 880th anniversary of the death of Roger de Hauteville (notable Norman knight and brother of Robert Guiscard (The Astute)) in the preface to the latest edition of his now well-established text, *Criminal Law*. While it cannot be guaranteed that Professor Howard will be remembered in the year 2682, the production of four editions of his book in less than two decades attests, at least, to the short term popularity of his work. It remains the sole comprehensive text on Australian criminal law, radiating its particular vision of the criminal law with a continuing intensity.

The years between the first and fourth editions have seen some important changes in the criminal law, foremost among which is the gradual separation of Australian from English law. This has been caused by legislative changes in both jurisdictions which render decisions more parochial, as well as by a number of decisions of the English courts which Australian courts, despite their traditional deference to English authorities, have found impossible to accept. Australian judicial independence essentially commenced with *Parker v. R.*[1] when the High Court refused to follow *D.P.P. v.*

* Lecturer in the Criminology Department, University of Melbourne.

[1] (1963) 111 C.L.R. 610.

Smith[2] in regard to constructive intention in murder (p. 44) and continued in the realms of self-defence (*Viro*;[3] *cf. Palmer*[4]) (p. 90), issue estoppel[5] (p. 21), intoxication[6] (p. 325) and the meaning of 'dishonestly' in theft legislation.[7] Cases such as *Haughton v. Smith*[8] and *D.P.P. v. Nock*,[9] which have created havoc in the English criminal courts, are certainly further candidates for rejection by Australian courts.

Professor Howard has dealt with changes in an evolutionary way. Unlike Professor Glanville Williams' revolutionary change from *Criminal Law: The General Part* (2nd ed. 1961) to *Textbook of Criminal Law* (1978) in which both style and substance were radically altered, the 17 years after the first edition finds *Criminal Law* fundamentally unchanged in structure and content. In successive editions relatively minor amendments are made to account for changes in the law. In this edition the sections on duress and sexual offences have been altered owing to major changes in case law and legislation. As well the section relating to the Victorian law of theft, dealt with by Mr Ian Elliott in the third edition, has now been rewritten by the author.

Whereas Mr Elliott provided a relatively sophisticated analysis of the subject by concentrating on three problems in the law of theft. Professor Howard takes the reader through the provisions of the Act, one by one, an approach probably preferred by student readers of the book. However, the absence of an analysis of the 'wealth of cases on the English law', which law is almost, though not entirely, identical (p. 235) renders most of the discussion of little value to readers who already have a grasp of the fundamentals. Such readers would be advised to refer to the standard English texts on the *Theft Act* 1968 (Eng.), the periodical literature, or to the sole Australian text, Weinberg M. and Williams C. R., *Australian Law of Theft* (1977). The extended discussion of the meaning of 'dishonestly' in the light of the recent cases of *R. v. Salvo*,[10] *R. v. Brow*[11] *and R. v. Bonollo*[12] does, however, provide the reader with a valuable guide to the uncertain state of the law.

Change by accretion has its dangers. Once reified in print, material which may have outlived its usefulness may prove difficult to remove or reduce. Paradigms prove remarkably resilient. The retention of the extended treatment of *Stephens v. Abrahams*[13] (pp. 300-8) despite the admission that 'it is an old case of little significance, rarely cited today' (p. 301) and the relegation of *Haughton v. Smith*[14] to footnotes provides one example of this phenomenon. Another is found in the six page discussion of the law of provocation in non-fatal assaults, which may have been a major issue in the mid-1960's but now seem less urgent and would probably warrant less attention if addressed afresh. Similarly, while new cases and references are continually added, few are deleted. Approximately half the references still date from before 1965. The American cases scattered throughout the book, which originally added a certain piquancy to the text, now, without updating, appear idiosyncratic, neither adding to one's general knowledge of United States criminal law nor giving one a sense of current movements in specific areas of the law. (See, e.g. p. 62.)

In the light of the evident success of this book with students and teachers of law alike and of its influence upon the judiciary it would be churlish to dwell upon a few relatively minor items in a text which has become an indispensable reference. It is hoped that future editions retain the freshness of quality and insight which was evident in the first edition.

ARIE FREIBERG*

[2] [1961] A.C. 290.
[3] *Viro v. R.* (1978) 141 C.L.R. 88.
[4] [1971] A.C. 84.
[5] *R. v. Storey* (1978) 140 C.L.R. 364; *cf. D.P.P. v. Humphreys* [1977] A.C. 1.
[6] *R .v. O'Connor* (1980) 29 A.L.R. 449; *cf. D.P.P. v. Majewski* [1977] A.C. 443.
[7] *R. v. Salvo* [1980] V.R. 401; *cf. Feely v. R.* [1973] 1 Q.B. 530.
[8] [1975] A.C. 476.
[9] [1978] A.C. 979.
[10] [1980] V.R. 401.
[11] [1981] V.R. 783.
[12] [1981] V.R. 633.
[13] (1902) 27 V.L.R. 753.
[14] *Supra.*

* Lecturer in Law, Monash University.

Statutory Interpretation in Australia by D. C. Pearce, 2nd edition 1980 (Butterworths). Retail Price $27.00 (hard cover only). ISBN 0 908417 012.

As this is the second edition of Professor Pearce's excellent work on construing statutes, it is only necessary to make a few comments.

The first edition fully deserved the high praise accorded to it in the Foreword by Sir Garfield Barwick. Few areas of the law are more difficult to chart, as I well know from experience. To have largely confined his examples to Australian cases (including only a few salient English decisions) was a most useful exercise — and one even more so in the six years since 1974 during which our courts have distanced themselves more from English courts.

Yet the older difficulties of trying to discover the 'intention' of Parliament remain. As Sir Garfield remarked, 'the so-called rules of interpretation are but frail guidelines to which recourse is had as a last rather than a first resort'. It is better to see them as 'approaches' — 'they may provide part of the tools for the task of interpretation; they should only unusually dictate its result'. Yet courts often give the impression that they are rules they are bound to follow; and this creates more confusion, especially among students.

Professor Pearce has been very selective in his choices of illustrations (no easy task). For the second edition he has added only some ninety cases concerning a very important area of a fast growing body of statute law in the six years since 1974. They all appear to justify inclusion, because they represent both the new approaches of some Judges on new topics and the more striking disagreements between Judges on the proper approaches.

Professor Pearce's only major change has been in the 'Mandatory-Directory' area — perhaps the most unsatisfactory part of the whole process of making sense in particular situations and in providing criteria for prediction. Correctly he observes that the result of courts looking to the *effects* of the rule 'has been to produce a multiplicity of irreconcilable decisions making it impossible to assert with any certainty that a provision will be held mandatory or directory in a particular context' (163). There is no single formula. One test applied is that, if the *main purpose* of the Act would be defeated if a task were not performed, it will call the procedure 'mandatory'. However, if injustice' would follow a mandatory test, it will be held to be only directory. If the practical consequences are enormous, it also will regard even a major defect as only directory — as in *Simpson v. Attorney-General*,[1] where a strict adherence to Constitutional procedures would have meant that a large amount of existing legislation would have been nullified (170).

Again, some courts have relied on the test of 'substantial' compliance. In a rough and ready way this can be useful, despite its vagueness; but as Professor Pearce points out, there are situations of 'all-or-nothing'. Either the requirement was fulfilled or it was not. A requirement of advertising the particulars of a proposed development was held to be an essential feature of the duty to notify the public — the effect would be completely defeated if this relatively small step was not taken (175).[2] 'Substantial' compliance is no help here.

It is then no wonder that Professor Pearce cannot do more than he has done: namely to divide the area into certain sub-areas and set out the prevailing idea in that sub-area as best he can. For sometimes courts have ignored even an Acts Interpretation Act stating that 'may' equals 'discretionary 'and 'shall' equals 'mandatory'. He provides a neat summary on p. 178.

Finally, he shows how, in general, subjective judicial views may lead to each Judge 'being his own interpreter' (179). The Law Commission in England had stressed that the main approaches in practice were often contradictory and that the 'literal', 'golden' and 'mischief' rules 'cannot stand with one another' (180). The most widely asserted — the literal rule — is in practice riddled with exceptions. It has become self-delusory

[1] [1955] N.Z.L.R. 271.
[2] *Scurr v. Brisbane City Council* (1973) 133 C.L.R. 242.