Brett and Waller's Criminal Law by C. R. Williams (5th Ed., Butterworths Pty Ltd, Sydney, 1983) pp. v-xl, 3-744. Price: $65 (cloth); $49 (limp) ISBN 0 409 49181 8; ISBN 0 409 49211 6.

A cursory glance at this book will convince most that a review of it is no easy matter. It is written primarily for students of the law but will also be very helpful to practitioners in the criminal law.

It has an excellent table of cases and selected portions of some cases are clearly identified in the table itself.[1] The index of this edition provides a more detailed breakdown of the contents than in earlier editions.[2]

Part I or the 'Introduction'[3] contains elementary principles of law and some information on the workings of the criminal law. In my view this is the weakest part of the book and detracts from its otherwise generally very high standard.

Most of the subjects discussed in this Part could fall more appropriately into Part 3, 'General Doctrines'[4]. Apart from this, however, there are other criticisms to be made about the actual treatment of the subjects.

The author himself states that the book is primarily for students and I cannot understand how any student could be assisted by the author's attempt to define 'a crime'. The mixture of philosophical theories which result in the author's definition of crime as an act or neglect which has three elements, namely liability to punishment[5], moral wrongdoing[6] and publicness[7], in my view makes the definition both inaccurate and incomplete. The author, of course, excludes from this definition crimes of strict liability. It is by no means clear what is meant by 'wrongdoing'. It seems to me the author equates moral wrongdoing with moral culpability and *mens rea*.[8]

Obviously much of our criminal law is based on general Judeo Christian morality but there are many acts forbidden by the law which have no basis in morality as such. The elements of punishment and publicness are not adequately dealt with and are incomplete.

Part I contains many references to historical factors as part origins of our common and statute law. The references to '*peine forte et dure*'[9], 'mute of malice'[10], 'mute by visitation of God'[11], 'benefit of the clergy'[12], and Augustinian and Thomistic notions[13], however interesting, have no place in a book presumably designed to inform the reader of the current substance of our criminal law, the doctrines currently applicable to its administration and the institutions and procedures existing to provide such administration. The above and other historical discussions are more appropriate to a work on the origins or history of the criminal law which students of criminal law no doubt have to study separately from its current substance and practice. The notion of *mens rea* is clouded by brief references to theories of some philosophers whose ideas are no longer relevant or helpful.[14]

If the author is looking at the present state of our criminal law, I believe it would have been more helpful to discuss the doctrine of *mens rea* in terms of a state of mind which includes those elements such as intent, criminal recklessness and criminal negligence and others, some of which are necessary to make the act or neglect criminal or unlawful.

The role of discretion[15] is a most useful discussion and displays a practical approach which, as the author rightly observes, has not been adopted by our High Court in their 'moralistic' approach to plea bargaining.[16] The burden and standard of proof[17] are dealt with at unnecessary length with the introduction of such concepts as 'the risk of failure to pursuade'[18]. These unduly complicate the explanation and understanding of the distinction between the two burdens of proof.

[1] Williams C. R., *Brett and Waller's Criminal Law* (1983) xi ff.
[2] *Ibid.* 729 ff.
[3] *Ibid.* 3 ff.
[4] *Ibid.* 405 ff.
[5] *Ibid.* para. 1.1.
[6] *Ibid.* para. 1.3.
[7] *Ibid.* para. 1.2.
[8] *Ibid.* para. 16.2.
[9] *Ibid.* para. 2.20.
[10] *Ibid.*
[11] *Ibid.*
[12] *Ibid.* paras 2.55, 2.56.
[13] *Ibid.* paras 1.4, 1.10.
[14] *E.g.* Descartes: '*cogito ergo sum*', Williams *op. cit.* para. 1.11.
[15] *Ibid.* paras 1.40, 1.41, 1.42.
[16] *Ibid.* para. 1.41.
[17] *Ibid.* para. 2.35 *et seq.*
[18] *Ibid.* para. 2.38 *et seq.*

Part II is a most useful set of chapters of a very high standard. Many cases are quoted at length and discussed. However, I find some shortcomings, such as the treatment of false imprisonment and kidnapping.[19] There is no discussion of the elements required to constitute the offences under the Victorian Crimes Act[20] and the South Australian Kidnapping Act[21]. As these types of offences are becoming more frequent I would have liked the benefit of the learned author's views on the definition of some of those elements, such as gaining an advantage or benefit (however arising).

In Chapter 10 there is an excellent treatment of participation in crime with one or two minor exceptions. *Russell's case*[22] is dealt with at great length and in a most scholarly fashion[23]. This, of course, is a most important decision. I query the learned author's assertion that the accused would have been entitled to an acquittal in respect of his wife in the circumstances outlined in 10.16. Surely the jury's verdict was based on criminal neglect and I would argue that in the circumstances of that case his responsiblity extended to his wife as well as his children, notwithstanding her mental attitude.

In dealing with participants in crime, I believe it would have been appropriate and helpful to include a discussion on *agents provocateur* and what is sometimes described as entrapment. A discussion of the subject of indemnity extending to actual particpants in crime would also have been helpful. These are matters of practical and at times crucial importance in criminal practice.

Entrapment is a common police ploy and the practising lawyer is constantly confronted with a charge against his client which has been brought about by a member of the police force or an informer who not only presented his client with an opportunity to commit a crime but encouraged or induced the crime. Although entrapment is no legal defence to the crime itself in Australia, a reference to *R v Capner*[24], *R. v. Sang*[25] and *McCann*[26] would have been welcome. The question of unlawfully obtained evidence should also have a place in this book.

Whilst appreciating it is not a text book on Evidence, some of the matters I have referred to are, I believe, matters of substantive law.

Part III, 'General Doctrines', is a fine example of the author's scholarship and he uses an analytical approach, always thorough, and at times brilliantly illuminating difficult concepts.

His reconsideration of 'strict liability'[27], with a minor reservation earlier expressed, is in my humble opinion a gem. Overall, therefore, I highly commend this book as not only a learned text for students but a very useful, if not essential, book in the library of any practitioner of the criminal law.

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[19] *Ibid.* para. 3.41, 3.42.
[20] Crimes Act 1958 (Vic.), s. 63A.
[21] Kidnapping Act 1960-1971 (S.A.).
[22] *R v Russell* [1933] V.L.R. 59.
[23] Williams *op. cit.* para. 10.15 *et seq.*
[24] [1975] N.Z.L.R. 411.
[25] [1980] A.C. 402.
[26] (1972) 56 Cr. App. Rep. 359.
[27] Williams *op. cit.* ch. 16.

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