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BOOK REVIEWS

CASES ON TRUSTS. By H A J Ford. The Law Book Company Limited, 1974. Pp xx, 824. Recommended retail price Cloth $24.00, Limp $19.50.

It is a great pleasure to welcome the third edition of this estimable work. Its virtues are well known. For courses which follow the order in which subjects are presented by Professor Ford, it is an excellent teaching instrument which demonstrates to a significant degree the capacity for ordered thought and analysis which the author refers to as the distinguishing mark of the lawyer. For courses arranged differently, it provides an invaluable selection of materials on the modern law of trusts.

In view of the plethora of recent decisions, the author's task in preparing the new edition cannot have been easy. Clearly some cases could not have been omitted: *Boardman v Phipps, McPhail v Doulton* and, for Australian students, the lamentable decision in *Lutheran Church of Australia etc v Farmers Co-Operative Executors and Trustees Limited* fall into this category. Few will quarrel with the dozen or so other recent cases which have been included or at least summarised. *Re Baden's Trust Deed* [*No 2*] and the one or two other decisions in which the implications of the reasoning of the majority of the House of Lords in *McPhail v Doulton* have been explored are, however, not included. Some may regret this; others, like the present reviewer, will concur in and, indeed applaud, Professor Ford's efforts to strike a balance between the developing and the well-established law.

In much the same way the reviewer is more than sympathetic to the author's refusal to inflict upon students topics which may hold considerable conceptual fascination for some but which, in non-revenue contexts, shed little illumination and have even less practical utility. Cases such as *Commissioner of Stamp Duties v Livingston* and *Gartside v I R C* do not receive a mention and *Baker v Archer-Shee,* as was the fact in previous editions, is cited only in passing.

The author has not limited his efforts to the insertion of new cases and extracts from new statutes such as the Victorian *Perpetuities and Accumulations Act* 1968. Textual comment has been expanded considerably, a number of questions and problems have been added and the references to periodical literature are a little more extensive. These things have been accomplished without any substantial increase in the size of the work and without detracting from its essential qualities.

Whatever their age or professional qualifications, Australian students of the law of trusts cannot afford to be without this book which continues to exemp-

lify so admirably the distinction between a first rate casebook and a mere collection of cases.

M C CULLITY

CASES AND MATERIALS ON INTERNATIONAL LAW. By D J Harris. Sweet and Maxwell, 1973. Pp xxvii, 779. Recommended retail price Cloth $23.25, Limp $15.80.

This is a good casebook on international law. It manifests thoughtful preparation and meticulous presentation.

The work's object is 'to cover the basic elements of international law, with a little leavening in the form of materials on some of the growth areas of international law which students find particularly interesting'. (p v) It is aimed at the British student, till now denied the experience of operating from a North American-type casebook.

Cases and Materials is traditional in coverage, chronology and approach. The major decisions of international tribunals dominate, supplemented by a range of national court cases (with emphasis on the British experience). The materials span treaties, UN and other institutional practice, and extracts from writers. All of these are well integrated and well chosen. In short, the chapters and sections are coherent, and provide a worthy base for teaching contemporary international law.

The author makes generous use of notes and comments. Two purposes are thus served. First, direct questions seek to provoke the reader to respond to the readings. As such, they often honestly display both the open texture and the many unsolved dilemmas of international law. Secondly, the notes provide information about facts and decision. They are concise and at times comprehensive. Often they are a mine of information and constitute a considerable part of the text. (For example, the chapter on Arbitration and Judicial Settlement of Disputes contains about 18 pages of extracts and 12 pages of notes and comments.)

International law is today an exciting area of great activity and new potential. Indeed, the vast growth of the international legal system means that it is not possible to present international law fully in one volume. Consequently the author of a casebook has some tough choices to make. At most, he can provide a basic understanding of the framework of international law, depicting the broadening participation and activity. *Cases and Materials* reflects these trends and achieves that purpose.

Ideologically, the work follows a fairly traditional approach towards international law (no doubt with its British market in mind). There is here little express recognition of the blend of international law and international diplomacy. More importantly, the author generally has chosen not to highlight the complex problems of policy, whether national ('national interest') or international ('common interest'). Perception of international law as a creative, dynamic, decision-making process, resting for its legitimacy and sustenance on community expectations, is thereby stunted. Without fuller elaboration about

where international law (and the study of it) is going, let two of the author's statements suffice. First: 'For the common lawyer, the most striking feature of the role of international courts and tribunals, and one of which he constantly needs to remind himself, is that cases do not make the law'. (p 53.) Secondly: 'Most of the law of treaties is "lawyers' law" over which the political interests of states do not clash'. (p 553.)

Overall, the fine quality and the 'international' scope of *Cases and Materials on International Law* should ensure its wide acceptance. For countries beyond its immediate market, the book would need supplementation. (For example there is neither an Australian case nor any Australian material—and no mention of them.) For countries without their own nationally-oriented works, however, Harris lends itself to adaptation. For the United Kingdom, moreover, Harris's *Cases and Materials* should become a worthy landmark in the study of international law.

WILLIAM E HOLDER

STATUTORY INTERPRETATION IN AUSTRALIA. By D C Pearce. Butterworths, 1974. Pp xviii, 165. Recommended retail price Cloth only, $12.00.

This is a useful and helpful book. With diligence and care the author has hunted through the law reports of the nation to document a formidable number of judicial dicta on how to interpret statutes. He has catalogued the essential observations made in over 500 cases. To the scores of people who have to interpret the ever-increasing welter of legislation the author has restated the general rules and shown how they have become embodied in Australian law.

The author has an uphill task at the outset to convince Australian lawyers that his work is a replacement for *Craies* or *Maxwell*. Tradition and habit are hard to overcome. For the time being *Pearce* will probably be regarded as a supplement to *Craies* or *Maxwell*. It will tend to be used to check on whether there is any local variation of the rules enunciated in these two standard works. But in the course of time it is possible to predict that subsequent editions will supplant the English books. The author is off to a good start.

Brevity has been the key note to the author's presentation. But I am not wholly convinced that the literal rule can be disposed of in a single page (p 14), the golden rule in three pages (pp 15-17) and the mischief rule in a page and a half (pp 18-19). As an illustration of how to apply the general rules of construction Lord Simon's dissenting judgment in *Cheng v Governor of Pentonville Prison* [1973] 2 All ER 204 at 210 on the meaning of the expression 'offence of a political character' in the Extradition Act 1870 is a model of judicial reasoning. Step by step he progresses through the internal linguistic guide, the golden rule, the mischief rule, the presumption against changes in the common law, the presumption in favour of conformity with international law, the presumption against absurdity, and the cases. For teaching purposes one can sense the true flavour of a court's approach to the whole question of interpretation. Selective though he has been one can argue that if the author

had culled further cases from the text and given us a fuller treatment of the more important cases, the reader might have obtained a better sense of how the courts try to resolve these difficulties. But this is not a book written primarily for teaching purposes; it is for use by lawyers.

This is not always an easy book to use. For example, wishing to check whether or not there were any cases relating to s 12, *Interpretation Act 1918-1972* (WA) of the effect on the common law following the repeal of a statute, I found it difficult to trace where this, or other comparable statutory provision, was dealt with in the absence of a table of statutes. Eventually I found the topic covered at p 75 but I would like to have made certain quickly that there was no possibility of any further reference being made to this section elsewhere.

There is a fair amount of 'clutter' contained in the text. One is frequently exhorted to see this case or compare that case. The table of cases does not include a lead into the other reports where the case may be found. The size of print used for quotations is small and, to those of us whose sight is not what it used to be, it is not easy to read. Doubtless these are limitations imposed by the publishers on the author, but the plain fact is that it is not possible to produce a good law book by cutting down on some of these essential items.

In the final chapter the author has presented some of his own thoughts and observations on the subject as a whole. I am not sure that his comments might not have been better woven into the main text, or perhaps have been the subject of an article in a law review. This is largely a question of taste but I suspect that the real value of this book is in providing a lead to the cases.

D BROWN

THE LAW OF MINORS. By David J Harland. Butterworths, 1974. PP xxxviii, 238. Recommended retail price Cloth only, $18.00.

As Mr Harland makes clear in the sub-title and preface to his book he is primarily concerned with analysis of the *Minors' (Property and Contracts) Act 1970* of New South Wales. Indeed he provides the reader with a thorough examination of that Act both in a historical and contemporary context. His reference to, and coverage of, the common law relating to contracts of minors is extensive. The cross-reference to other New South Wales legislation which has been affected by the Act is more than adequate. To New South Welshmen in particular, whether they be of either academic or practical bent, or both, this book would be a beneficial if not necessary addition to the Law School or office library.

To those who work outside NSW, the book is an interesting academic reference. Of particular note is the examination of the concept of a 'civil act' which has been incorporated by the New South Wales draftsmen to delimit the area of infants liability by specifying certain situations in which an infant may be held liable. This is an apparent attempt to avoid the somewhat vague generalities of the common law. However, as the author points out the Act also requires that a court consider the 'beneficiality' of a contract or otherwise in determining whether an infant shall be bound by a 'civil act'. His discussion

of the common law relating to 'beneficial civil acts' provides one with a comprehensive source of common law authorities and accordingly will presumably be a valuable source of reference for all readers. The statutory restrictions on repudiation and the common law background thereto are also discussed at length as are matters relating to property, succession and torts. Practitioners, particularly in NSW, would find the chapter on jurisdiction and procedure and the appendix of Acts amended by the *Minors (Property and Contracts) Act, 1970* helpful.

Mr Harland provides New South Welshmen with a searching overview of the law relating to minors now applicable in that jurisdiction; others with a comprehensive reference to the common law. It is perhaps a pity that the author has seen fit not to adopt a similar attitude towards the existing legislation in other states of the Commonwealth. This is no doubt the understandable outcome of the author's primary concern with the New South Wales Act. One hopes that Mr Harland will provide both academic and practical lawyers with a more universal appreciation of the law relating to minors' contracts in the different states of the Commonwealth by way of comparative statutory analysis in conjunction with his encyclopaedic knowledge of case law.

R L AKEL

LAW OF CONTRACT: TEXT AND MATERIALS. By Derek Roebuck. The Law Book Co Ltd, 1974. PP xx, 467. Recommended retail price Cloth $19.70, Limp $13.20.

The author prefaces his book with the caveat that he has written for Australian students, 'especially those *not* in law faculties . . .' Yet it is possibly because of this very fact that the book will provide the law student with a handy explanatory guide. Since it has been written for students who are not obliged to immerse themselves in the more juristic aspects of the law of contract its presentation is both selective and simplistic. It is easy to read and understand. It is mercifully free of woolly conceptualities and controversies. The author also concentrates on Australian authorities which help to bring the subject nearer to home and emphasise the role of the Australian courts in the development and interpretation of the common law. Notations with regard to references and acknowledgements are placed at the end of every chapter together with a self-tuition test for the student. Individual and separate treatment of many *loci classici* has been omitted, no doubt by design. Considerable emphasis has been placed on more recent case law and judgments which refer to many of the earlier cases are reproduced.

This reviewer would not prescribe this book as a text to law school students if for no other reason than the author's prefatory note that he is not primarily concerned with such an audience. They can presumably go to the more comprehensive works of eg *Cheshire and Fifoot, Treitel* and *McGarvey, Pannam and Hocker*. However this reviewer would certainly recommend Mr Roebuck's book to contract students as an introduction to and clarification of contract law.

R L AKEL

EXPLAINING CRIME. By Gwynn Nettler. McGraw Hill, 1974. Pp viii, 301.

Gwynn Nettler attempts to 'explain crime' by a general conspectus of criminological theory. According to the book, 'the public'[1] is suffering from too much 'serious predatory crime' and wants something done about it. The task of the criminologist then is not to question the nature of this complaint, but to provide a cure—the general public must be answered in its own terms. Not that there is anything basically wrong with attempting to widen one's audience. On the contrary, it is high time that criminologists did so. But such communication will not be aided by a book of this sort, which assumes the existence of the disease without further ado and proceeds with a skimpy and superficial analysis in which personal opinion is often presented as validated fact. This latter tendency is indeed strange, since Nettler readily admits that 'how "good" any explanation is varies with the question that is asked and with the assumptions embedded in the question'. (p 1). Having paid lip service to this idea, however, she completely fails to examine the assumptions of the theories she condemns and commends.

Although in the chapter on 'The Meaning of Crime' some acknowledgement is given to the present day debates concerning social injury and crime and the scope of criminology as a study, these are afforded little consideration and their implications are not followed through. This dismissal of such critical issues is justified on the grounds that the 'common man' is not concerned with them. The task of the criminologist is not seen as that of trying to translate this debate into ordinary language, trying to show how such issues affect the questions which the 'public' are asking. No, the task is to answer those questions and to provide 'useful' theories which will point the way to social reforms for crime reduction.

The focus then, by the author's own admission is that of correctionalism. Completely oblivious to the debate surrounding this particular ideology, from the preface onwards the emphasis is on the practical consequences of applying a theory. Examination of the theories is at a highly empirical level, and given the enormous coverage of the book, it is inevitable that such an examination is generally truncated and over-simplistic. Merton, for example, is considered in the space of just seventeen lines and Durkheim's anomie is considered in only one of its two meanings. An examination of containment theory, which takes up all of three sides, allows Nettler to conclude 'containment theory, like the differential-association hypothesis, is true' (p 221).

1 Nettler makes constant reference to the "public", "the common man", "most people" "the majority" and "people in general". The focus in the book is said to be with those acts that "the public considers really wrong" or have been "universally condemned". The evidence for this concern is presented on pages 3 and 4. It consists of a series of opinion poll results apparently indicating that 'crime' is the most important domestic issue in America. It says nothing of which other issues it is more important *than*, or the *type* of crime involved, or the *nature* of the concern. Nor is it sufficient simply to assert that 'most citizens' feel "shame and anger when their valued edifices . . . are wilfully damaged". From the reading of the rest of the book it becomes clear that 'the public' is being used in an attempt to justify the author's own value judgments.

Apart from being an extremely tedious book to read, this work can be criticised on just about every level on which one might care to examine it. From the inconsistency of the arguments of the book itself, to the misrepresentation of many theories, to the omission of certain crucial areas and problems, to its failure fully to articulate its underlying assumptions, Nettler's work has little to commend it.

Starting with the last chapter first, the whole tone of the book there takes a dramatic turn. Having previously rejected certain theories on the grounds that they do not point to acceptable social solutions, we are now presented with a series of nine 'criminogenic conditions',[2] loosely lumped together under the broad category of 'culture', which seem to appear out of nowhere and lead to the conclusion 'we destroy cultures at our peril. Culture is an acquisition, not an endowment. It is transmitted not invented. The best hope for containing the damage that our self-interests "naturally" inflict on each other lies in the continuity of a culture' (p 262). There is no social prescription here; indeed Nettler recognises that some of the criminogenic conditions (eg social mobility, the comforting chemicals, the mass media) will continue without change because of their positive aspects, and crime will be accepted as part of the price to be paid for them. Compare this final attitude, then, with that, for example, towards subcultural theory—'if one is a reformer and wishes to "cure" the subculture of its violence, he receives no informed instruction from the subcultural explanation. He might as well attack one facet of their culture as another—child rearing practices or religious beliefs; leisure pursuits or job satisfaction. Insofar as the subculture of violence is a patterned way of life, there is no particular lever for reformers to use' (p 149). One could surely make a similar statement about Nettler's own formulation.

The other ground on which certain theories are condemned is the lack of empirical evidence. Thus, for example, it is said of the 'reactive hypothesis'—'the assumption that extremely hostile behaviour represents a reaction formation cannot be verified. Worse, for scientifc purposes, the assumption cannot be falsified' (p 172). This is fair enough if you are striving to be scientific, but just how scientific are Nettler's own propositions?[3] Take the following two examples:

> the mass media make a contribution to crime. These instruments have functioned thus far as culture-breakers and as generators of feeling of relative deprivation (p 256); and
>
> Recidivism is a common phenomenon among those punished under the criminal law. This does not mean, however, that enforcement of the law has no general deterrent effect, that it has no effect in raising the threshold of temptation for most individuals. Nor does the fact of recidi-

2 Criminogenesis is defined on page 38 as synonymous with 'crime causation'. Insofar as Nettler's intention is to explain crime, the search for 'causes' is understandable. What is strange, however, is her repeated assertions throughout later sections of the book that 'correlations are not causal'. While this assertion is indeed true, it does not seem to prevent her making causal statements in the final chapter of the book. The whole attitude towards this problem is difficult to comprehend.

3 This is not to be read as agreement with the attempt to be 'scientific' but merely to show that Nettler's approach on this matter is contradictory.

vism deny that law enforcement has the 'indirect effect of stimulating and reinforcing the normative climate of the community' (p 260).

Just *how* would one attempt to validate or falsify these assertions on such highly complex issues?

But Nettler not only fails to live up to her own professed criteria but applies them inappropriately to other theories. Thus, the critique of labelling theory is directed at four things—'Labelling theory has been criticised for ignoring the differences in behaviour described by labels. The labelling schema draws attention from deeds to the public definitions of those deeds. Such diversion means that (2) labelling theory does not increase, and may well decrease, our ability to predict individual behaviour. Its low predictive power is a result not only of its neglect of individual differences but also of the fact that (3) it contains a defective model of causation. This in turn means that (4) its relevance to social policy is lessened' (pp 206-207). Quite apart from the disgracefully over-simplistic discussion of these points which follows, surely some consideration should have been given to the theorists' own ideological position on these issues. The fact that they are utterly opposed to a correctional philosophy, and take great pains to explain why, is not mentioned by Nettler. Had this been done, it would have become apparent that the first two criticisms, at least, in fact are basic assumptions of the theory; they *inform* the theory and are not *conclusions* from it. Such theorists would assert that prediction of behaviour is not at all desirable and not what they are striving for,[4] that labelling is not meant to be an explanatory theory, but a perspective from which to direct our approach to the study of crime.[5] As Nettler uses the foundations of the theory as her own conclusions, she fails to give any attention to the implications of the labelling ideology itself, particularly as regards her own position. Informed debate on the causation problem is not concerned with the issue of whether the model is defective in the manner described by Nettler, but rather with the fact the theory re-introduced a form of determinism which it was hoped to avoid.[6] Finally, of course, the alternative argument concerning social policy is not that labelling theory is *irrelevant,* but rather that it is *too easily* reconciled with 'liberal social policy' and too much oriented toward middle range institutions.[7]

Presentation of labelling theory is thus extremely misleading. It receives just 13 sides attention and from the very start is considered as nothing more than a vaguely interesting, but definitely inconsequential, idea. It is treated in inadequate depth and the discussion is both patronising and confusing. The perspective is initially described as a 'bundle of assumptions' but its important philosophical base is totally ignored. Participant observation is said to be 'fun' and 'good sport' without any consideration of the advantages and disadvantages of such a research methodology. The theory itself is said to be 'congenial to

4 See especially, the earlier work of David Matza, BECOMING DEVIANT, Prentice Hall 1969.
5 Edwin M Lemert, *Some Aspects of a General Theory of Sociopathic Behaviour,* Proceedings of the Pacific Sociological Society 16, 1948, 23-9.
6 Taylor Walton and Young, THE NEW CRIMINOLOGY Ch 5, Routledge and Kegan Paul 1973.
7 Alvin Gouldner, *The Sociologist as Partisan,* American Sociologist, May 1968 103-116

revolutionaries, of course, whose ideology translates the label "convict" as "political prisoner" ' (p 206).

There is no discussion of *why* such translation may take place and the whole idea is dismissed from serious consideration,[8] particularly as it also is said to be 'fashionable'.

Labelling theory is not the only one to be totally distorted by Nettler's presentation and a better understanding of them might have helped to avoid some of the absurdities of the book. On page 247, for instance, there is the assertion:

> Insofar as some sociologists may be reluctant to accept the control formulation, their reluctance seems attributable to the fact that the control propositions, like those of the subcultural hypothesis, do not point to easy or popular political solutions.

This, of course, is mere surmise on the author's part. There are no statements to back it up and no consideration at all of those sociologists who reject the control formulation on ideological grounds.

Other absurdities within the book are legion. My own preference is for that on pages 237-238, which runs as follows:

> Rohrer, Edmonson and a team of behavioural scientists (1960) observed Negroes in the Southern United States 20 years after these same individuals had been described by other investigators (Davis and Dollard 1941). Rohrer and Edmonson's research is a clinically oriented study concerned with the development of individual careers. Although this longitudinal research did not use a control group for comparison, it confirmed the image of the male gang-running criminal as a person who denies the legitimacy of religion, schools, law and morals, and who considers occupational striving worthless. The descriptions of each career are well drawn and illustrate a central theme of control theory, namely the harmful impact of fatherless households upon the emotional development of boys.

Now, why else would Negro males in the Southern USA adopt such attitudes other than because they were reared in fatherless households?

Finally, in terms of its omissions, one can point to some of the empirical research that appears to have been overlooked. Nowhere, for instance, in the section on Eysenck and Trasler, is consideration given to the patient criticisms of Hoghughi and Forest,[9] Little,[10] Christie[11] and Passingham.[12]

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[8] Revolutionaries, apparently, are also attracted by the theory of Mertonian anomie, but it is clear that Nettler considers that such political radicals can be rejected. Thus, on page 177, Nettler comments on Goodman: "His vision is utopian and consequently disillusioning. The high ideas are in accord with neither present reality nor future possibility, and they do not generate useful recommendations." Presumably, Nettler does not see her own vision in the same way.

[9] M Hoghughi and A Forest, *Eysenck's Theory of Criminality,* BJ Crom 10, 1970, 250-254.

[10] A Little, *Professor Eysenck's Theory of Crime* an empirical test on adolescent offenders, BJ Crim, 4, 1963, 152-163.

[11] R Christie, *Some Abuses of Psychology,* Psychological Bulletin s 3, 1956, 439-451.

[12] R E Passingham, CRIME AND PERSONALITY: A REVIEW OF EYSENCK'S THEORY, Uni London 1967.

One can also point to the gross failure even to consider present-day theory in the form of such people as Platt, Quinney and the Schwendingers in America, Taylor, Walton and Young in England and the whole of the Scandinavian school, as epitomised in the work of Mathiesen and Nils Christie.

But such criticisms really only scratch the surface and deal with the technical limitations of the book rather than quarrelling with its correctional assumptions. But time and again statements are made which force a re-examination of its whole perspective. When this is done, it becomes clear that the book is wrongly titled—Nettler's concern is not with understanding *crime* but rather with explaining the 'serious predatory *criminal*'. The one exception to this is Nettler's final chapter where, as already commented, she completely abandons all the 'facts' about the social location of such people and moves to an all-embracing cultural breakdown explanation. The attempt throughout most of the book, however, is to demonstrate just how very different these people are from the rest of the 'public'. The law enforcement process apparently filters the most serious, repetitive offenders into the Criminal Justice System for expert examination. There is no mention of the vast numbers of petty thieves, drunks and vagrants received by the Police, Courts and Prisons every day, and very little consideration given to the high possibilities of committing offences of robbery, burglary, rape and theft without being detected.

The constant reference to 'serious predatory crime' assumes that there *is* agreement on what it constitutes. The way in which such a definition is arrived at is not considered—one of the most important implications of present-day debate is completely overlooked. Fraud, corruption, false advertising, pollution, embezzlement, price fixing, tax evasion, and breaches of health and safety regulations, are not defined as 'serious' but described in more neutral terms such as 'administrative' and 'public interest'[13] offences. This merely helps perpetuate the idea that people involved in such activities are not really criminal and thus their family background need not be examined nor Introversion-Extraversion tests administered. Indeed, the phrase 'white collar crime' is not used at all, although a few brief paragraphs on pages 181-183 do indicate something of the extent of these offences and the everyday nature of much criminal activity. The only explanation offered in this section of the book is that 'some crime is rational'. The implication, of course, is that the other offences, with which Nettler is concerned are *irrational.* Such a one-eyed approach is not worthy of serious consideration.

Nettler totally rejects the significant debates of present-day criminology—debates raised not only by the political ideology of the New Left in England but by the realistic confrontations with such events as the Vietnam War, Watergate, Civil Rights movements and political protest in America. The book is remarkable only for its naivety.

DALE TODD

13 In view of Nettler's own emphasis on the need to consider "the public" one would have thought that, even in her own terms, this type of offence would be deserving of serious consideration.