

is discussed. The General Index, under the heading 'Requisitions on Title' contains the entry 'on Sale under Transfer of Land Act pp. 488-491' and the entry 'Subject matter of—488-491', a somewhat inadequate clue. The General Index under the heading 'Sale of Land Act 1962' contains references only to pages 108 and 109, which pages contain no cross references. It does seem to me that such important provisions, while discussed in the text, are worthy of readier accessibility. The determined investigator who can spare the time will be led eventually to pages 488 and 489 by turning to the Table of Statutes, and working steadily through the lengthy list of the pages where the Act is referred to.

But it would be a mistake to allow the considerable merits of the work to suffer detracted by reason of the imperfections of the index, important as the index is to the busy lawyer. I am quite certain that the work will continue to be in constant use and will afford a solution to all the problems likely to arise in relation to contracts of sale of land, or will bring before the inquirer all the material available to solve them. The absence of a fuller commentary on the Sale of Land Act 1962 is explained by the author in the preface as being due to the fact that it is anticipated that early amendments to the Act are to be made, in which case a supplement to the work is to be published. It was unfortunate that although there are a number of references to the case of *The Arcade Hotel Pty Ltd* 1962 V.R. 274, there is no reference to the Transfer of Land (Restrictive Covenants) Act 1964 which resolved the difficulties created by that case. No doubt the date of the Act, 5th May 1964, made it impossible to incorporate it in the text.

The volume is admirably produced and easy to read. The actual page size is greater than it was in the first edition with the result that, although the number of pages is very little greater, each page contains more text. The book is therefore less stocky and bulky than its predecessor and much more attractively presented.

The profession is fortunate to have available an up-to-date edition of so well-established and highly regarded a treatise upon a difficult subject of great general importance. The learned author is to be again congratulated upon the excellent presentation of his extensive industry and research.

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Crime and the Community, A Survey of Penal Policy in New Zealand, Department of Justice, New Zealand. pp. i-x, 11-112, Index 113-114. N.Z. price, £1.

In *Legal Duties and Rights* (Melbourne 1883) a work whose merits deserve more recognition than they have received, Professor W. E. Hearn described robustly the State's Theory of Punishment as it was understood over 80 years ago. He wrote:

The State from whatever motive, chooses that certain acts shall be done or certain forbearances observed. It secures this object by punishing disobedience . . . Whether the obedience arises from mere terror or from any higher motive the State does not inquire. It is the regulation of conduct, not the regulation of motives, with which it is concerned. Consequently, its aim in punishment is merely the enforcement of

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obedience and not the moral reformation of the offender . . . When (a person) breaks the law, it punishes him not by way of discipline but by way of prevention or example. I do not contend that when the State has under its absolute control convicted felons, *servos poenae*, it does not thereby incur a moral responsibility not merely for the physical but for the moral needs of these unhappy men. Prison discipline affords ample room for a prudent charity and a reasonable philanthropy. But in the choice of its sanctions the law regards the welfare not of the criminal but of those innocent persons whom that criminal has disturbed or endangered.

This survey of penal policy in New Zealand shows how markedly the emphasis has changed since 1883. The New Zealand approach (largely shaped by a former Minister of Justice, Mr H. G. R. Mason, Q.C., and the present Minister, Mr J. R. Hanan, and the Secretary for Justice, Dr J. L. Robson) is common to British communities, and publications from the British Home Office (notably, in 1959, *Penal Policy in a Changing Society* (Cmd 645)) have formulated and justified similar attitudes. However, the New Zealand volume does more than set out what might be called a modern philosophy of penal science; it describes the institutions and the way in which the various phases of the correctional system actually operate. The aim of modern penal systems is to reduce as far as practicable the personality-destroying rigours of uniform, rigid, and unimaginative repression, and this book tells of the constructive and sensible experiments that have been undertaken in New Zealand. The method of periodic detention, used with young vandals and larrikins, calls for mention. If a youthful offender who has not previously served imprisonment or borstal training, or been detained in a detention centre, is convicted of an offence punishable by imprisonment, or if he has failed to pay a fine, he may be sentenced to report at a work-centre in the evenings and during weekends for a period prescribed by a magistrate. At the work-centre, the youth may be assigned to manual labour there, or at some designated public institution. He may also be required to attend educational classes and lectures, and a course of physical education, and the opportunity is taken to assist him by guidance and counselling procedures. The scheme is designed to correct youths who will drift into serious trouble if not checked in time, and it has the merits of avoiding incarceration and of reminding them sharply of their social responsibilities by forfeiting the leisure time they are prone to misuse.

The need to retain criminal punishment as one of the methods of conditioning and educating human beings in acceptable behaviour cannot be disputed, but there is ample room for criticism of penal systems, even when the administrative approach is as enlightened as in New Zealand. This may be largely due to the conflict of purposes which the community seeks to achieve. Society must proclaim that good conduct deserves praise and reward, and evil-doing censure and pain. Moreover, the urge to punish is powerful, and so is the desire to retaliate, even with citizens not personally affected by a particular criminal activity. With disheartening frequency, human beings are guilty of atrocious or despicable deeds, and righteous indignation is a readily understandable emotion. Because it is an emotional state, however, and because it is commonly the prerogative of the respectable majority, it is potentially an instrument of injustice,

but, where it does not err by immoderation, it may be a socially valuable influence.

The dilemma of penal reform is a real one. When it comes to reclaiming wrongdoers, prisons are often, though not always, self-defeating. An experienced New Zealand prison chaplain said recently, 'The pull of prison was downwards when I went there seven years ago and it is still downwards. There is no future in prison'. The prison world is abnormal by nature and by design, and a very high proportion of its inmates are psychotic, or feeble-minded, or sexually deviated. As the anonymous authors of this volume observe in chapter V, 'The Offender', 'Prison quickly uncovers and exacerbates personality weaknesses'. Too many prison inmates are the misfits and the rejected; they are society's most unpromising material, and where they are alcoholics and vagrants, a sensibly conceived penal system should not be clogged and burdened by them. Recruiting and retaining staff in a time of full employment in an affluent society concerned mainly with prestige occupations rather than missionary endeavours, also presents grave problems. A correctional institution will be as good and as effective as its staff, and it is discreditable that governments do not provide conditions for penal officers that will attract men of capacity and dedication. The popular attitude is still too heavily influenced by the Rev. Sydney Smith's notion, expressed in 1822, that a prison should be 'a place of punishment from which men recoil with horror—a place of real suffering painful to the memory, terrible to the imagination'.

There is no sign that we shall be able to do without prisons, but though we are still ignorant of many things needed for the reclamation of wrongdoers, this publication reveals we know enough to effect great improvements. There is plenty of verified material to show that in the long run physical punishment (which includes incarceration in humiliating penal conditions) is positively damaging to the individual if it errs too greatly on the side of severity, and that the theory of controlling behaviour by punishments of maximum severity is not only immoral but unscientific and ineffective. There are wicked and vicious criminals who for society's protection should be held indefinitely in protective custody, but the number of these is far less than is commonly believed. To recommend that our conditioning techniques should have, as well as a firm and constructively conceived discipline, kindness and understanding as their basis, where possible, is not mere sentimentalism; it is actually supported by the knowledge, still rudimentary, that has been assembled concerning the methods of controlling human conduct and influencing it for the better.

Every law student should read this volume. He will gain from it an understanding of the theoretical approach of penal administrators and of the actual operation and impact of the punishment of imprisonment that was not readily available to former generations of judges and legal practitioners. The technical and philosophic complexities of the law are fascinating, but their proper purpose is the advancement of human happiness. It would be gratifying if more lawyers were to bring their skills to an endeavour to solve the seemingly intractable problems involved in the morally permissible use and the social utility of criminal punishments.

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BOOKS NOTED

Butterworth's Australian Current Law 1963-1964, edited by L. F. OSBORN, B.A., LL.B., 2nd ed. (Butterworth & Co. 1965), pp. 1-324. Price £2 17s.6d.

This paperbound volume will be of value, not only as a convenient guide to all cases reported in every series of Australian law reports during 1963 and 1964, but also as an index to new statutes, regulations and rules of general interest of every Australian State and of the Commonwealth appearing in the same period. As such, it is probably the most up to date general guide to Australian current law. Each subject dealt with is complete in itself and includes both the cases (under alphabetically arranged sub-headings) and the statutory information relevant to it. In some instances, reference is given to articles recently published in legal periodicals throughout the Commonwealth. Finally, a valuable table of all State and Commonwealth statutory provisions judicially considered in the 1963-1964 period appears separately at the back of the volume. There is no general index to cases, statutes or articles, but a comprehensive and detailed subject index renders the contents of this volume readily accessible.

Australian Supplement to the Principles of Modern Company Law, by L. C. B. GOWER, LL.M. (Lond.), 2nd ed., compiled by I. I. Kavass, LL.B. (Melb.), (The Law Book Co. of Australasia Pty. Ltd., 1964), pp. i-xviii, 1-224. Price £2 5s.

This supplement provides an Australian key to a well-known English treatise. The independent development of law in Australia has tended to limit the usefulness of highly reputed English law text-books. Professor Gower's book, although it makes some reference to decisions of the High Court of Australia, must be qualified in many respects for our purposes on account of legislative differences between Australian and English company laws. The inconvenient task of adaptation has now been done for us by Mr Kavass in his very useful Australian supplement. In view of the basic similarity between the two bodies of law, Mr Kavass has not re-written Professor Gower's book. But he has provided in relation to each chapter and page of the English work references to relevant statutory provisions in all Australian states, the Australian Capital Territory and the Northern Territory. The author indicates whether or not there is a corresponding section in our provisions, and notes any variation or divergence. Australian cases are cited if they are relevant to Professor Gower's text or mark a distinctive development in Australian company law.

The Victorian Solicitor, by ARTHUR HEYMANSON, B.A., LL.B., and KENNETH H. GIFFORD, LL.B., 2nd ed., (Law Book Company of Australasia Pty. Ltd., 1963), pp. i-xx, 1-278. Price: £3 16s.

This is a second edition of the well-recognized guide to the Legal Profession Practice Act and the rules made under it. Besides a detailed annotation of the Act and the various rules regulating the conduct of the legal profession, it contains an annotation of the Rules of the Council of Legal Education and a completely new treatment of the general precepts of professional conduct. One of the original authors, Mr E. H.