spectre of lay justices and partly trained magistrates (who preside over the vast bulk of offences involving dishonesty, in Victoria at least) working their way through the law pertaining to equitable tracing, constructive trusts, and quasi-contract is one which is too awful to contemplate. Yet Professor Williams argues that the theft provisions must be construed in this manner. Your reviewer can only shake his head and respectfully disagree. This is not to say that civil law concepts have no role to play in analyzing the Theft Act, but merely that it is dangerous to import in its entirety a body of case law clearly designed and developed to achieve different ends.

It is difficult to know how to evaluate this book. It displays great erudition on the part of the author (who quotes extensively from Deuteronomy, Lewis Carroll and Nietzsche amongst many other sources) and is, on the whole, exceedingly well written. Yet it is not a book that will commend itself to first year law students studying Criminal Law. Nor will it appeal to practitioners seeking brief and straightforward expositions of the substantive law involved in any particular case they might happen to be handling. It is really a scholar's book, full of speculation about troublesome issues, painstaking analysis, and concrete proposals for reform. In these terms it will be of inestimable value.

MARK WEINBERG*

The Law of Intestate Succession in Australia and New Zealand, by I. J. Hardingham, (Law Book Co. Ltd, 1978), pp. 1-156. Price $16.00 (hardback). ISBN 0 455 195 471. $11.50 (paperback). ISBN 0 455 198 411.

This book sets out and explains the statutory provisions of the Australian States and Territories and of New Zealand governing distribution on intestacy. It begins with the historical setting of intestate succession. This is of course interesting for its own sake, but is also of contemporary importance because in a number of States, where the intestate is not survived by a spouse, children or parents, the legislation provides for the distribution of the residuary estate among his 'next-of-kin' without disclosing how they are to be ascertained. Although the legislature offers some assistance by saying who is not included in the favoured class, it is to the civil law that one must look to determine this aspect of intestate entitlement under the common law. Dr Hardingham describes the method of determining the next-of-kin under the civil law (page 10).

The de facto wife gives rise to several problems in the succession context; problems which are arising with increasing frequency. In Victoria she cannot claim under Part IV of the Administration and Probate Act 1958 and she cannot take on an intestacy although she may be most deserving. On the other hand her children by the deceased are not discriminated against: see Status of Children Act 1974. Her position is the same in most Australian States. Dr Hardingham points out that South Australia makes provision for the 'putative spouse' and gives that person a right to take on an intestacy and to make a family provision application. A 'putative spouse' is one who is, on a particular date, cohabiting with another as that other's de facto husband or wife and has so cohabited for five years immediately before that date, or during the period of six years commencing before that date has so cohabited for periods aggregating not less than five years, or has had sexual relations with that other person resulting in the birth of a child: see Family Relationships Act 1975 (S.A.) (discussed at pages 69-70). The New South Wales, Western Australian, Tasmanian and New Zealand legislation makes a token gesture to deserving non-kin. There the Crown is able to make provision out of intestate property coming to it as *bona vacantia* for the intestate's dependants, whether kindred or not, and for other persons for whom the intestate might reasonably be expected to have made provision. This would enable the Crown to benefit dependent remoter kin not eligible to take

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directly on an intestacy and dependants unrelated to the intestate such as a de facto spouse. This is an unsatisfactory scheme; mean in concept and fortuitous in operation. But it is better than nothing, and in Dr Hardingham's view should be adopted by those States, such as Victoria, which have no such provision.

After the statutory provisions of the selected legal systems are dealt with, there comes a discussion of various miscellaneous matters, *e.g.* hotchpot, felonious killers, Testator's Family Maintenance legislation, survivorship, conflict of laws and 'contingent partial intestacies'.

Where an intestate has died but a short time before a practitioner is faced with the mode of distribution of the estate there is usually no difficulty in rendering speedy and accurate advice. But if, as is often the case, an intestacy is discovered or arises long after the death (as in the case of a contingent partial intestacy), the task is not as simple. The next edition of Dr Hardingham's book might well provide a number of tables showing, for each State and Territory, the appropriate distribution depending on the date on which the intestate died. Thus: 'if your intestate died between 1929 and 1953, then . . .' (*cf.* 17 *Halsbury's Laws of England* (4th ed. 1976), paras 1404 and 1413).

The Appendix (pages 157-223) contains the text of the major legislative provisions governing intestate succession in the legal systems examined.

There is no comparable coverage of intestate succession in Australia and New Zealand and Dr Hardingham's work is most welcome.

ROSS A. SUNDBERG*

Family Law in Australia, by H. A. Finlay, (2nd ed., Butterworths, 1979), pp. i-xxxii, 1-365. Price $21.50 (softcover); $27.00 (hardcover). ISBN 0 409 35451 1; *Family Planning and the Law*, by H. A. Finlay and J. E. Sihombing, (2nd ed., Butterworths, 1979), pp. i-xii, 1-228. Price $15.00. ISBN 0 409 43577 5.

Since the publication of the first edition of *Family Law in Australia* seven years and considerable legislative reform have resulted in significant changes to the law. The second edition sets out to describe the law now that the first problems of transition from the Commonwealth Matrimonial Causes Act 1959 to the Commonwealth Family Law Act 1975 have been weathered. The Family Law Council was established under section 115 of the Family Law Act to monitor the operation of the Act. However it is likely that the immediate future will see a period of stock-taking and consolidation rather than reforms of the magnitude that have been experienced recently. In view of this it is not surprising that the second edition of *Family Law in Australia* places less emphasis on possible reform. This is not to say that there are not anomalies, defects and lacunae in the field of family law, nor that the Family Law Act is perfect in all respects. The author does not hesitate to draw attention to such matters and to suggest possible solutions.

The book as a whole however concentrates on describing the *status quo* in a wide range of topics fitting under the family law rubric. There is some reorientation of material covered in the book and the introduction of new material dealing with the constitutional issues raised in *Russell v. Russell*.[1] A chapter is devoted to an analysis of the background to the constitutional problems raised by *Russell's* case and to consideration of the effects of that decision and the unhappy state of fragmentation in which the jurisdiction finds itself as a result. The perhaps over-zealous amend-

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[1] (1976) 50 A.L.J.R. 594.