

undergo the operation offers him the only possible hope he has of obtaining release from an indefinite detention. In such circumstances, the distinction between punishment and voluntary medical treatment must appear to him somewhat tenuous.

One word of criticism may be offered concerning the form in which the report is issued. There is a full table of its contents at the beginning, but no index. This is a handicap to the reader and it is to be hoped that any further report of this kind which may be prepared will be equipped with a detailed index.

Sexual offenders present a perennial challenge to our social order. Some of them, such as the advanced sadist, are so dangerous that their activities must be prevented at all costs. Others, such as the exhibitionist, are comparatively harmless nuisances whose activities cause annoyance but no great social danger. Between these two extremes lie a host of different types of offender whose activities, if they need to be resisted at all, will call for considerable differentiation in treatment. Too often, in the past, our attempts to meet this challenge have resulted from a temporary mood of panic caused by some particularly serious case which has been played up by the popular press. In no field of our criminal law and criminal science is the need for a major overhaul so apparent as in this. This report is a considerable contribution towards the making of such an overhaul. Its appearance is to be welcomed, and it is to be hoped that further reports on similar lines will appear in the future. Meanwhile, those responsible for the present work are to be greatly congratulated upon their efforts.

PETER BRETT*

Industrial Relations in Australia by Kenneth F. Walker, Cambridge, Harvard University Press, 1957. xviii and 389 pp. (£3/18/9 in Australia).

Even for an Australian trained in the law, the systems of industrial relations in Australia are complicated. For example, how can workers in one State be employed under a federal award while their "opposite numbers" in an adjoining State are under a State award or even under the rules of a wage board? This is only one of the complications involved in understanding the Australian procedure. Such matters plus the vastness of the country make generalisation upon economic and legal institutions difficult indeed. How then can industrial relations be described? A writer can generalise or he can examine the institutions under a microscope.

Professor Walker of the University of Western Australia has chosen the latter procedure and has done it well. Some of his critics, I am sure, would ask how he could call his book "Industrial Relations in Australia" when he has examined so few industries. To such critics he would probably say that unless one understands some industries well, the kaleidoscope which is labour relations for all Australia is too blurred to be of any value.

In this book, his doctoral dissertation at Harvard University, Professor Walker does not entirely avoid generalisation. A brief history of the development of arbitration both in the Commonwealth and in the several States, is followed by a short but adequate description of the operation of the several systems. Shortly after this book was published the Commonwealth law was changed. In an article in *The Economic Record* of April 1957 Professor Walker describes these changes.

Presumably some readers will think those twenty-four pages of general description too few to enable a reader unacquainted with Australian arbitra-

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tion machinery to gain the proper background for studying the details to follow. I think not. The author does not aim to give a comprehensive legal history and analysis of the several laws. He tells enough so that the reader can follow the later industry chapters with ease and will understand the critical analysis at the end of the book.

Industrial relations in four industries are examined in detail and in three others more generally. The first four are the furniture industry of New South Wales, the metal mining industry of Broken Hill, the Queensland meat slaughtering industry and the coal mining industry of New South Wales. Examined in less detail are the pastoral, metal and stevedoring industries. The author does not explain why he selected these particular industries for study, yet one might ask why include the Broken Hill mining industry, which is unique in the world, rather than industries like textiles or basic steel or some industry operating under one of the state wage board systems? Nor is there an explanation for the considerable detail given for the comparatively small furniture industry and the sketchy study for such important Australian industries as pastoral and metal. Presumably, however, Professor Walker felt that industrial relations in the industries he selected give some insight into the general problems of the Commonwealth.

As described in the preface, the author makes use of what he calls the ecological approach which "views industrial relations as the interaction of employers and employees in an economic technological and socio-political environment". Thus each case study follows the same pattern with sections headed (1) The pattern of industrial relations, (2) Organisation of the industry, (3) The Union (or unions), (4) The employees; and (5) Determinants of Industrial Relations Patterns. Under these general headings the author has skilfully given his readers an insight into the several industries and has shown how the interactions among several factors have had their effects upon the general industrial relations patterns in the industry. In some industries economic factors seem to stand out; in others the history of past relations or the personalities of leaders may affect the pattern more than economic or legal matters. In discussing cases, Professor Walker does not forget the arbitration system and describes how the parties have used the existing machinery for settling their differences. In this reviewer's opinion, he underestimates the importance of the New South Wales court system in describing industrial relations at Broken Hill. The metal mining industry, to be sure, prides itself on its collective bargaining. As the author himself points out, however, but then seems to forget, the mere existence of the court settles some problems for the parties before they even sit down to bargain. Furthermore, although a dispute is rarely referred to the court, the parties do have that institution to fall back upon in the event there is an impasse.

Having presented the case studies, the author turns to an evaluation of "the main factors interacting in Australian industrial relations in general". There are many interesting observations in this section of the book. For example, there is a summary of the findings of the Board of Inquiry when Victoria was considering changing its machinery. Here one finds the arguments for and against wages board systems as compared with court systems of legal regulation of industrial relations. In this section, too, there is a brief summary of the concept of the basic wage with the historical background arising from the Harvester Award of 1907. Included also is a description of the several basic wage factors such as "Fair Wages", "Capacity to Pay" and "general economic policy" which the Court has considered during the years of operation.

Other aspects of industrial tribunal policies are discussed with a minimum of description and considerable analysis. One wishes, however, that this section of the book could have been longer. One page on "union security, compulsory unionism, and the closed shop" is hardly enough space to devote to so

fascinating a subject as it has been ruled upon by industrial tribunals. In this section, too, might have been included more economic analysis of the effects upon the Australian economy of the rapid spread of changes in the basic wage or the less obvious effects of "roping in disputes" on the spread of uniform working conditions to large and small firms throughout the Commonwealth.

Other chapters in Part Three deal with the achievements of labour, with employers' associations and their policies, with "the implications of specific industrial case studies", and a final chapter is entitled "Arbitration in Perspective". The chapter on employers' associations is one of the few, if not the only, published study of these interesting parts of the Australian machinery, and it is unfortunate that Professor Walker was not able to obtain and include more information on these organisations.

The chapter on the implications of the specific case studies provides an interesting analysis of the factors which have made for peaceful or warlike relations between the parties in the industries studied. The author first establishes a series of criteria covering the variations in the pattern of relations in different industries of which statistics of work stoppages is one. He then gives us a list of nine "proximate determinants of industrial relations patterns" such as effectiveness of direct action, economic horizon of employees, and methods of management. At this point in light of the proximate determinants he analyses the industries previously studied. This analysis is competently done and is an interesting piece of work.

Professor Walker's final chapter evaluates Australian arbitration under five main headings which he says "can be regarded as subsuming the various hopes and fears expressed by the founders of the system". Under the heading "the problem of compulsion" strike statistics of Australia and other countries are analysed to see if compulsory arbitration has indeed led to industrial peace. The evidence is not conclusive. Can Arbitration through Courts be used effectively when basic social conflict is involved? Again the evidence is not conclusive, yet it is clear from the case studies that arbitration has been of little help toward reaching industrial peace when the conflict between the parties has involved such basic conflicts. Experience in meat packing and stevedoring bear out this conclusion.

Thirdly, has arbitration helped the parties gain a more conciliatory attitude toward each other? To be sure, says the author, experience differs in different industries but by and large, arbitration "has discouraged the development of constructive attitudes to industrial relations".

And fourthly, what of arbitration as a method of social and economic regulation? Under this heading the author examines the effect of the Australian system on abstract social justice and upon general economic policy.

He then discusses the problem of the best type of machinery to use for carrying out the law's procedures. In this section, after referring to his earlier summary of the relative merits of the various types of industrial disputes machinery, the author analyses the reasons for the divergent opinions concerning objectives and policies held by unions and employers' association. Finally there is a summary of the tentative conclusions reached in this latest chapter together with the author's studied opinion that for better operations certain changes in the system are desirable. No suggestions for changes are given, however, since that is beyond the scope of this study.

Professor Walker may be rightly proud of this book. He has indeed contributed to an understanding of the social and economic factors which affect and are affected by the several systems found in this continent. Here and there one wishes for further elucidation or description but the only major criticism is that somehow or other the book does not hang together as it should. In other words, there is not a strong enough thread tying the three parts of the book to one another. For example, the excellent chapter on the Achievements of

Labour and upon Employers' Associations contain no references to the case studies, yet those same case studies do help to an understanding of trade union and employers' association activities.

Yet Professor Walker has accomplished his aims. He has "increased our understanding of industrial relations in Australia" and he has contributed "to our knowledge of industrial relations processes generally".

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The Law of Torts, by J. G. Fleming, M.A., D. Phil. Sydney, The Law Book Co. of Australasia Pty. Ltd., 1957, xxxix and 779 pp. (£4/4/- in Australia).

The common law has been described as a seamless web. In some of its reaches, at least, it might better be classed as a tangled skein and this is surely true of that fascinating area known as the law of torts. It is scarcely surprising that here the law affords a bewildering array of doctrinal rules, expressed rationales and tacit assumptions. An endless variety of controversies from street fights to traffic mishaps to trade wars, conflicting land uses, character assassination and beyond all crowd together into the tort classification. To deal with a vast area of modern man's social friction the law of torts relies largely on rules that are rooted in history and shaped by the court procedure of earlier days; on rules that are frequently based on inarticulate and perhaps contradictory premises concerning the function of the law in this area. All of this is discouraging in the extreme to anyone contemplating a text on the subject — if it is one subject. Nonetheless, text-writers are made of relatively stern stuff and several, albeit infrequent, attempts have been made to capture the law of tort in one volume.

The texts of Salmond and Winfield through their many editions have won very wide acceptance. For the most part these standards limit themselves to a statement of what the English courts have done in various classes of tort cases usually formulated in terms of general rules and exceptions thereto. The organisation adopted in these texts offers an initial and extended treatment of such general matters as parties, capacity and remedies, followed by examination of the substantive tort doctrines as expounded in the leading cases with more recent cases evaluated largely in terms of their consistency with the older decisions. Though this sequence of materials has found small favour with English tort law teachers there can be little doubt that the disinclination of these texts to look much beyond the bounds of the decided cases (and the English cases at that for the most part) has had a real impact on successive generations of law students, practitioners and judges.

None can deny the utility of texts constructed on the Salmond-Winfield model but there are other ways of writing very useful and stimulating textbooks. A little more than a year ago there appeared the first new English text on torts in twenty years. In that text¹ Professor Street dispensed with the preliminary general material and launched at once into the substantive law of torts, somewhat reorganised as to sequence with an orderly progression related to the nature of the plaintiff's interest invaded and the kind of harm suffered. His was a book of substance, a valuable addition to torts textbooks and in some respects it was a bold departure. Nonetheless, and perhaps because of the constraint of tradition the Street text is also limited for the most part to recounting in skilful style what the English courts have done in tort cases.

By way of contrast legal texts in the United States, at least those of standing,

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¹ H. Street, *The Law of Torts* (1955).