BOOK REVIEWS

AN INTRODUCTION TO CRIMINAL LAW (6th edition). By Rupert Cross and P. Asterley Jones. Butterworths. 1968. Pp. 366. $8.70; soft cover $6.30.

The days when Kenny was the standard, undisputed choice for all students of English criminal law seem to have come to an end. Cross and Jones has now established itself as first choice having the advantage of being a straightforward presentation of the subject with no frills. Clearly the authors have set out to make the subject comprehensible to the so-called average student of law and they have succeeded.

Occasionally one hears criticism that there is 'not enough' in Cross and Jones for the honours law student. In the process of learning the law there are three distinct stages; (i) comprehension or understanding, (ii) learning, for the purpose largely of reproducing it in an examination, and (iii) a critical or comparative examination of the rules. The last stage is the sophisticated stage for which Cross and Jones is a sure and sound foundation. In this textbook there is an absence of criticism or comparison. For example, the disappearance of misprision of felony receives no mention. Was it a good thing or was it a doubtful act to abolish it? Because the Criminal Law Act 1967 abolished the distinction between felonies and misdemeanours by implication misprision of felony also disappeared. Misprision of felony is committed when a person who has knowledge of a felony actually committed fails to disclose it to the police or other appropriate authority. It was spoken of as being resurrected in *Sykes v. Director of Public Prosecutions*[1] where the defendant knew that others had stolen firearms but concealed the information from the police. The decision was influenced by *R. v. Crimmins*[2] where it was held by the Supreme Court of Victoria that it is a citizen's duty to disclose to the appropriate authority any treason (misprision of treason remains an offence in England) or felony of which he has knowledge. In this

1 [1962] A.C. 528.
2 [1959] V.R. 270.

case a feloniously wounded person concealed details of the identity of the assailant and the place where the wounding took place. It is true that the Criminal Law Act 1967 introduces two new offences of "impeding" and "concealing" but neither is adequate to cover a situation where, say, a householder observes and identifies a murderer committing murder in his neighbour's house, but fails to report the matter to the police. Surely he is under more than a moral duty to do so? For the time being *Sykes* and *Crimmins* remain good law in Australian States which adhere to the common law but there is no statutory offence of misprision of felony in any of the Code jurisdictions.

Inevitably with the changes occurring in English criminal law and its move towards codification, the English textbooks will be of limited value to the Australian student. Enactments like the Theft Act 1968 may be a distinct improvement on the subtle distinctions between larceny, obtaining by false pretences and embezzlement. It seems unlikely at the present time that the Australian States will consider changing their criminal law to accord with the new English statutes. Thus the unification of the criminal law in the British Commonwealth as a whole must be delayed many years. The English criminal lawyers will be speaking a different language when they refer to "dishonest appropriation" in regard to theft.

It is interesting that Cross and Jones have not made a single reference to any Australian case. The authors have adhered solely to the English cases. They have not thought it necessary to seek elucidation or illustration from Australia or from other jurisdictions with similar systems of criminal law. Not even *Parker v. The Queen*[3] where Dixon C.J. spoke of the decision in *Director of Public Prosecutions v. Smith*[4] as forcing a 'critical situation' in relation to the judicial authority of English precedents in Australia, is mentioned; although it must in some measure have contributed to the enactment of section 8 of the Criminal Justice Act 1967 which overruled *Smith*. In their desire to keep their presentation short and to the point the authors have eliminated anything but the directly relevant.

The first part of the book is devoted to general principles, the second to the specific offences and the third to procedure. It is possible that the authors have carried their task of abbreviation too far for the purpose of the English student in regard to procedure, but for Australian readers it is useful to have a textbook which sets out

3 (1963) 111 C.L.R. 610.
4 [1961] A.C. 290.

briefly the peculiarities of the English court structure and its method of trying suspected criminal offenders. This basic information is desirable when trying to translate the principles underlying the English decisions into an Australian context.

The authors have succeeded in giving their textbook life and feeling. They have succeeded in making the new provisions governing theft more than mere drab rules guiding human behaviour. As the quickest and easiest means for ascertaining the primary rules of criminal law in England this textbook is the answer.

DOUGLAS BROWN

CONFLICT OF LAWS IN AUSTRALIA. By P. E. Nygh, assisted by E. I. Sykes and D. J. MacDougall. Butterworths, Sydney. 1968. Pp. 765.

When I first came to Australia in 1965 and began to teach Conflicts, I was immediately struck by the absence of a comprehensive Australian text-book on the subject. For decades, this absence seemed to suggest, Australian Conflicts must have been treated as little more than a dependent limb of English Conflicts. Yet palpably it was much more than this. The fact of federation had already led to the growth of a rich Australian strain, and could easily prove even more fertile in the future. Australian Conflicts was obviously a close relation to English Conflicts—but not a poor relation. What, therefore, could explain this mystifying lack of an indigenous text-book?

I did not know the answer to this in 1965, and I still do not. But the question has passed into history now, for with the publication of Nygh's book on "Conflict of Laws in Australia" the gap has been comprehensively and definitively filled. In his book not only does Nygh deal fully and accurately with particularly Australian aspects of Conflicts—such as the scheme created by the Service and Execution of Process Act, the problem of full faith and credit, the effect of sections 79 and 80 of the Judiciary Act, etc.—but he also manages to give a fresh approach and arrangement to the other, more traditional, material. For example, chapter 8 (on the selection of the *lex causae*) and chapter 12 (on the exclusion of foreign laws and institutions) are well-written and thoughtful chapters in which the author demonstrates that he is familiar with modern writings without falling into the trap of giving fascinating theoretical speculation an undue weight. By way of further example, Nygh recognises how confusing it can be to the student for the principles of recognition to be left