

BOOK REVIEWS

THE SEXUAL DILEMMA, by Paul Wilson. University of Queensland Press, 1971, pp. 1-172. \$6.50 (cloth), \$1.50 (paper).

The principal objective of *The Sexual Dilemma* is "to assist the general public, and their legislators, to arrive at a rational solution to one of the greatest sexual problems of our time—the dilemma of having to decide whether abortion, homosexuality and prostitution should remain illegal or whether public policy should be changed so that they are no longer considered to be crimes". By the term "homosexuality" the author is referring to homosexual practices in private between consenting male adults.

Paul Wilson makes no apology for being provocative and in this he is successful. He dissociates himself expressly from the traditional sociologists who have used a technique of "detached scientific observation". Instead, he admits having a desire to "change the world" in as far as public policy is concerned, and he claims he is not afraid to "shout in the sense of making his points as forcibly as possible".

Abortion, homosexuality and prostitution are placed by the author on the "criminal threshold" because they are claimed to meet seven criteria, namely they are activities which are defined by legislation as crimes, but:

- (1) "result in no visible external consequences which can rationally be shown as harmful or detrimental to the community or individuals living within it."
- (2) "lack 'mens rea' (evil or guilty mind) on the part of those indulging in the activity."
- (3) "have no 'victims' who would file complaints."
- (4) "are generally unenforceable in terms of detecting and deterring the vast majority of those who participate in the activities."
- (5) "in which the law is operating in the field of what would generally be regarded as moral questions."
- (6) "which by consequent legislation and enforcement give rise to secondary pathology in the society such as police corruption, blackmail, organised crime and other behaviour patterns disruptive to the society."
- (7) "which, one suspects, could in the future be removed from the scope of criminal law because public opinion now or in the future no longer considers these activities as crimes or the people who engage in them as criminals."

In specifying these criteria, the author is making a rod for his own back. Many who oppose liberalisation of the law in one or more of the areas under discussion would challenge his assertion that abortion, homosexuality and prostitution meet all seven requirements or the spirit of them. The last is drawn in such vague terms it is difficult to see that it can be used as an effective measuring device at all.

Separate chapters are devoted to the respective activities. In each, the author discusses theories of the incidence of them and the characteristics and attitudes of those who practice them. Controversial issues are mentioned under four categories, religious, social, medical and legal. It is recognised that these issues are intertwined but the headings assist the reader in an orderly consideration of the presented material. The wide range of topics covered in the book and the fact that, including the index and notes, it consists only of 172 pages, is some indication of the brevity of the presented material.

The theme of the chapter on abortion will not be new to those who have followed the course of recent developments in South Australia. Wilson points to the confusing differences of opinion between the Christian Churches. The inadequacy of contraceptives to rid the world of unwanted children is stressed, the abundance of backyard abortions is deplored. The author implies that there is no reason to regard the human foetus as an appropriate object for the protection of the criminal law, yet no argument is advanced in support of this proposition. Indeed, his attitude is hard to reconcile with the view he endorsed in an earlier chapter that the law must afford particular protection to those who are "specially vulnerable because they are young, weak in body or mind, inexperienced, or in a state of special physical, official or economic dependence." Wilson minimises the fact that abortion involves the termination of human life and that many would regard this factor as crucial in distinguishing the abortion issue from the others under discussion.

In the homosexuality debate, the author claims the major issues are social and legal rather than religious or even medical. Christian Churches are unanimous, or nearly so, in regarding all homosexual practices as sinful. However, in Wilson's view, few Australian Christians would wish to see all such practices as criminal. The social issue is heated because of the contention that homosexual practices threaten family life and increase the likelihood of corruption of the young and of blackmail. All these arguments the author seeks to answer empirically. Extra-marital relationships are seen as a greater threat than homosexuality to the stability of the family unit. Authority is quoted for the proposition that homosexuals who normally prefer adult partners rarely become paedophiliacs. Wilson's strongest argument is that the law is a blunt instrument with which to deter homosexual conduct and that prisons are often a breeding ground for it.

Christians should feel challenged by Wilson's claim that "most Churches in Australia are still undecided whether to ignore [the permissive attitude towards sex] or remain aloof from it or to plunge into the fray with an attempt to give Judo-Christian values a more contemporary flavour." The possible spread of venereal disease, the increase of other types of serious crime and the breakdown of the family unit are all considered and discarded by Wilson as possible objections to legalised prostitution. Instead, he claims that liberalisation of the law could lead to an improvement in standards of health and hygiene. Regular medical examinations could be made compulsory.

The fifth chapter concerns public opinion on the activities under discussion. Perhaps it is significant that the author declines to state the exact weight he attaches to the polls because they do not give unequivocal support to his own views. Indeed, only 22% of his sample supported legalisation of homosexual

practices between consenting male adults. Although 64% disagreed with the statement "Abortion should not be legal under any circumstances" it is wrong to conclude this percentage necessarily favoured liberalisation of the law. In fact, at common law, the practice of abortion is considered legal in limited circumstances, according to decisions in England and Victoria.

After a brief comparison with the law in other countries, Wilson concludes the book with his own recommendations for reform. Although the reader will anticipate a proposal for abortion on demand (and the author thinks he has come close to it), in some respects the recommendation is less liberal than the recent amendment to the South Australian Criminal Law Consolidation Act. Predictably, the proposals relating to homosexuality and prostitution are permissive.

The Sexual Dilemma will arouse public interest. It is easy to read and many of the arguments for liberalisation of the law are superficially attractive. At a deeper level, however, it is unsatisfying. Many will feel that it is dangerous to pay such scant attention to important issues even in an effort to reach the heterogenous public. Perhaps the author was too ambitious in defining the scope of his subject.

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AUSTRALIAN WILLS PRECEDENTS, by *F. C. Hutley, Q.C.* Butterworth & Co. (Australia) Ltd., 1970, pp. 1-116.

This small and unpretentious volume, which is described as the Australian edition of Parker's *Modern Wills Precedents*, has an eminently practical quality about it. Each chapter, except the first, which deals with "General considerations as to drafting a will", consists of a brief discussion of the topic to which the chapter relates, followed by one or more precedents. They start with "Contracts as to disposition by will" and work steadily through the sequence of a will to "Attestation".

The precedents are of clauses and not of complete wills, although a few complete wills are added in a separate section at the end of the book. This seems to me to be a very good characteristic and is one which this work shares with another Australian production, W. E. Miller's *Australian Will—Draftsman's Handbook*, to which it bears a general resemblance, both in content and in format. Precedents of complete wills are necessarily of limited value, because they can practically never completely meet the requirements of the case in hand and because repetition is unavoidable. "Wills in a completely knocked down state", as this author describes them, give greater value in less volume.

A word of warning to the non-New South Wales user of this book is desirable. Mr. Hutley expressly states that it is "for use by New South Wales testators and no account has been taken of the laws of other States". Unless

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this is borne in mind, the book may be, in some respects, misleading to users in other States. This is particularly so in the field of death duties, where, so far as State-imposed duties are concerned, the book takes cognizance only of New South Wales legislation. This means that, not only are there, of course, passages which have no application in other States, but also, so far as South Australia at any rate is concerned, possibly a few precedents which might have very undesirable results, if used here without modification. For instance, the precedent at page 35, after providing for the testator's widow to have a right of residence in the matrimonial home, makes provision for the purchase at the widow's request of another house in place of the original one and authorises the executors to use money from the residue of the estate to make up any deficit between the proceeds of sale of the old house and the purchase price of the new one. Under the South Australian system, where a contingency exists of assessing succession duty initially upon the highest possible vesting, this would, it seems to me, produce the result that duty would initially be assessed upon the assumption that the whole of a perhaps large residue would be applied towards the purchase of the new house. This could well result in an unsatisfactory duty situation. The simple remedy would be to provide in the will an upward limit to the amount that could be spent on the new house.

Nevertheless, by far the larger part of both the discussion and the precedents is as applicable in South Australia, and, no doubt, in other States also, as it is in New South Wales. It is only the user not on the alert or ill-informed about the laws of his own State who might occasionally get into trouble.

Perhaps the most striking and unusual feature of this book is the simplicity and at times almost "popular" character of the language used in the precedents. In these precedents, nobody "gives devises and bequeaths" anything. They simply "give" things. Such time-honoured terms as "predecease" or "die during the lifetime of", which roll almost of their own accord off the tongue or the pen of the average will draftsman, are replaced by "die before". "At the time of my death" becomes simply "when I die". And it is not merely phrases, but sentences and whole passages, which have this quality of simplicity and almost, one might say, of artlessness (using the term in no derogatory sense). In reading the precedents I occasionally felt that the draftsmanship would have been improved if slightly more complex language had been used, but, on the whole, I feel that this style of draftsmanship is refreshing, clear, and modern in spirit.

In his preface Mr. Hutley suggests that the justification for another book of precedents of wills may well be challenged, but, I think that, even in this well-ploughed field, his book breaks new ground and fully justifies its existence, both as an aid to practitioners and as an example to students.

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AUSTRALIAN TRADE PRACTICES: READINGS, edited by J. P. Nieuwenhuysen. Australia: Cheshire 1970, pp. i-xxv, 1-315; bibliography 317-323; index 325-331.

At this point in time it is with great interest that a new book dealing with Australian trade practices is greeted, the subject now receiving wider publicity than it ever had at the passing of the Trade Practices Act in 1965. And there is to this date little enough Australian literature on the subject.

This book, edited by a senior lecturer in Economics at the University of Melbourne, consists of a collection of readings, some by economists and some by lawyers. Some are new, but most are old, and as a result it is doubtful whether the book adds greatly to our existing knowledge of the subject. But this is not the object of the book, which, the editor states, is "designed mainly for Australian university undergraduate courses dealing with trade practices legislation" with the hope that it will provide "the growing number of students with easy access to journal articles which, in overcrowded libraries, are often difficult to obtain". In passing, the editor hopes the book will be of interest to lawyers and businessmen.

The book is divided into three sections: (1) Theory, (2) Current Issues in Australian Trade Practices legislation, and (3) Early legislation in Australia and the 1965 Act. At this point I make my major criticism of the collection. It is apparent from this classification that the work follows no particular pattern. The headings to each part do in a general way describe the essays contained therein but the headings do not prevent the collection from being a hotch-potch. This makes it difficult for the reader who wants to read the book from cover to cover, as perhaps the interested lawyer or businessman would want to do. It also makes it impossible for a student to use the book with any method. The book cannot as such be an effective teaching tool, although it could be a useful reference book as it does contain some of the most important Australian essays on the subject, including "Legislation in Search of an Objective" by Maureen Brunt and "Restrictive Practices and Monopolies in Australia" by Alex Hunter. This, of course, is the merit of the book, it will save those interested in the topic from searching "high and wide for some of the essential readings". The range of readings is extensive, from "A Business View of Restrictive Practices Legislation" (as one would expect, an anonymous contribution) to "Is there a Theory of Restrictive Trade Practices" by the editor. Six of the fifteen essays are written by lawyers, the others by economists, the editor thus emphasizing the inter-disciplinary approach necessary to understand the subject. Of the six legal essays two new essays have been written for the collection by Mr. Collinge, a senior lecturer in Legal Studies at the University of Melbourne, one on collective pricing and the other on resale price maintenance. Unfortunately the latter is already out of date. Two of Geoffrey de Q. Walker's thought-provoking articles are republished as further legal contributions to the collection. Of the economic essays four are new, three by the editor and one on "Concentration Ratios" by N. R. Norman. The essays by the editor are descriptive rather than analytical, especially those dealing with "Recent Light on Trade Practices in Australia" and "Monopoly Legislation Overseas".

From this brief resumé of the contents the disjointed nature of the work can be appreciated. With more structuring and introductory comment to the articles the editor could have achieved a continuity which would have made the book more readable and in addition a more helpful teaching tool. At the same time the book could still have served as a handy collection of the leading Australian articles on the topic.

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PEOPLE IN POVERTY—A MELBOURNE SURVEY, by *Ronald F. Henderson, Alison Harcourt and R. J. A. Harper*. F. W. Cheshire Publishing Pty. Ltd., for the Institute of Applied Economics and Social Research, University of Melbourne, 1970. \$4.50 (hard); \$2.50 (paper).

"I was glad to avert my gaze from the dingy and dilapidated tenements and warehouses which we were passing. Poverty was a thing I hated to look in the face; it was like the thought of illness and bad smells, and I resented the notion of all those squalid slums spreading out into the uninfected green country." Siegfried Sassoon, *Memoirs of a Fox-Hunting Man*.

People in Poverty reminds Australians that poverty is not limited to "undeveloped" countries. Poverty is a relative concept. And in relation to average living standards in Australia, a sizable number of Australians appear to live in poverty.

The authors' findings are based on extensive surveys conducted in the Melbourne metropolitan area between 1966 and 1968. They took as the standard unit a family consisting of a man, dependent wife and two children. As the poverty line they used the basic wage plus child endowment which in 1966 was \$33. On this formula, the poverty line when the book was published in mid-1970 would have been \$42.20. Today it would be higher still, the increase in benefits of the 1970 budget being more than offset by the 6% increase in the national wage. Using a complex, but convincing, formula, the authors adjusted the income of other units, such as a single person living at home, by reference to a "standard cost" for selected income units. If the "adjusted income" fell below \$33, then the unit was below the poverty line.

On this basis, the authors found that 7.7% of the Melbourne population were below the poverty line, and a further 5.2% "marginally poor".

Taking into account the surprising finding that the average "standard unit" was spending \$21.83 per week on food, it is hard to disagree with the authors' assertion that the fixing of the poverty line at \$33 was austere. Moreover, the survey was limited to those living in private dwellings, so that the homeless and those in institutional accommodation were not included. No doubt both groups contain a substantial proportion of persons below the poverty line.

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Having determined the extent of the problem, the authors conducted surveys designed to discover the principal disabilities contributing to poverty. Some of the findings are expected, other surprising. The worst-hit unit was a family without a male head. 45% of such families were found to be in poverty. 37% of "aged males" living alone and 39% of "aged females" were in poverty. These three groups easily headed the list. Some of the poverty was due to bad management. But this was minimal compared with cases of unavoidable hardship.

The authors put forward, forcibly but dispassionately, a number of suggestions to alleviate the position. One hopes that the scientific excellence of the research and the fact that they are suggestions of realistic economists will make them politically acceptable. Such measures as an increase in child endowment, a reduction of the lengthy waiting period before parents of migrants are entitled to welfare benefits and an increase in domiciliary services are sensible and economically feasible remedies. More controversial, perhaps, are the proposed introduction of national health and national superannuation schemes and the abolition of tax deductions for dependent children (to offset the increase in child endowment). The case for each is cogently argued. Perhaps surprisingly, the authors produce a convincing argument in favour of the retention of the means test.

The book's final chapter is a most timely appeal for co-ordination of social services, and particularly for provision of social workers in local communities. This chapter has particular significance to South Australia. In Victoria, twenty-one local councils employ a social worker, yet in South Australia only the Adelaide City Council provides a professional worker. Moreover, the South Australian Director of Social Welfare has recently announced a programme of "decentralization" of his department. At the moment of writing, the future rôles of the various State Government, local council and voluntary welfare agencies and their relations with each other are hopelessly vague, and a source of great concern to South Australian social workers. There is an urgent need for clarification.

Some readers may think it odd that this work is being reviewed in a legal periodical. But it seems to me that it is most worthwhile reading for lawyers.

First, it contains informative and accurate accounts of welfare services and benefits available to indigent clients. These are of increasing importance, especially to those practising Family Law.

Secondly, it will be an essential reference book for any course on Welfare Law. I am not aware of any such course presently being taught in an Australian Law School. But such courses are common and popular in American Law Schools, and at some English schools, notably Birmingham. Meanwhile, Family Law and Administrative Law teachers are inclining to include more welfare law in their courses. Readers of Toose, Watson and Benjafeld, *Australian Divorce Law and Practice*, will have noticed scales of Welfare benefits in various parts of that book.

Finally, and most importantly, *People in Poverty* paints a vivid picture of the hardships of the poor. Legal services are fortunate to have avoided, except incidentally, the severe strictures directed at medical and welfare

services. But if the authors had chosen to look at legal services in South Australia, they would have found them scandalous. Perhaps it is impertinent of an academic lawyer to criticize the services of legal practitioners in a jurisdiction in which he has never practised. But the imperfections of the South Australian legal aid scheme are so gross and obvious as to be intolerable to a civilized community. The local profession, which seems on the whole humane and dedicated, should rise up at the lack of a fair, subsidized scheme for legal advice. Lawyers may not be wholly or even largely to blame for the lamentable situation, but it is incumbent on the profession at the very least to lobby more diligently. I suspect that there remains in some circles of the profession the deplorable view that the quality of advice should vary according to payment. If so, *People in Poverty* will amply demonstrate the genuine inability of persons to afford six dollars for an interview with a lawyer.

There is also a need, readily apparent from this book, for a greater liaison between the legal profession and other advisory bodies, such as Citizens' Advice Bureaux. There is a need for poorer citizens to be independently advised and represented in their frequent dealings with bureaucracy. There is a need to establish an efficient legal aid scheme properly subsidized by the Government. There is a need for a Law Centre dispensing advice cheaply but professionally (such as the Neighbourhood Law Centre recently established in North Kensington, London).

If any lawyer doubts these needs, let him peruse this outstanding piece of social research.

J. Neville Turner*

DEMONSTRATIONS, by the South Australian Council for Civil Liberties. Adelaide, 1971, pp. 1-74, \$1.60¹.

In a recent address on law enforcement to the Association of the Bar of New York, Commissioner Patrick Murphy of the New York City Police pointed out that "new problems call for a critical re-thinking of the strategies and tactics of the past". As the Commissioner indicated on this occasion, in considering the existing legal standards on freedom of expression, and other matters of concern to law enforcement agencies, care must be taken to guard against "a yearning for a return to the past when simpler solutions to simpler problems seemed to work".

As a result of an Anti-Vietnam Demonstration in the City of Adelaide in September 1970, South Australia has been forced, almost of necessity, to critically re-examine the standards of the past on freedom of expression, along the lines supported by Commissioner Murphy, with special reference to the limits of the right of protest in the streets. To assist this process, a Royal Commission of Inquiry was appointed. Amongst the statements made to the Com-

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1. Available only from the S.A.C.C.L., Rooms 215-217, Richards Building, 99 Currie Street, Adelaide; Mary Martin's; and the Adelaide University Union Bookshop.

missioner was a submission by the South Australian Council for Civil Liberties. Although prepared in the context of a particular debate concerning one limited series of events, this submission has proved, however, to be a document of wider significance. As South Australia does not have a viable market for a publisher to print a book made from such a submission, and as it does not appear in the Appendices to the printed Royal Commission Report, it has been issued in mimeographed form by the Council and released through some booksellers.

The reason why this submission, albeit in mimeographed form, has already found a ready market, is not hard to find. Not surprisingly, because of the haste with which the submission had to be prepared, and the context which led to its production, there is sometimes a touch of the polemical in the views expressed. At the same time, in a generally well-balanced fashion the authors have traversed most of the vital issues concerned with the protection of freedom of expression in the modern Australian context. Evaluating the existing laws on demonstrations, including offences relating to behaviour during demonstrations, powers of arrest and the relations of the Police to Government and the public, the authors have pointed strongly to the need for a critical re-appraisal of the "strategies and tactics of the past". In doing this they have not limited themselves to a consideration of some of the special anachronisms of South Australian law, like section 63 of the Lottery and Gaming Act, with its vesting of power in police officers to move people on in public places at will, without recourse to the style of protective standards which exist in the United States, for example, in circumstances such as this. Rather, the authors have spread their net more widely to take account of the reliance today on the venerable, unsatisfactory, ill-defined limits of offences such as riot and unlawful assembly.

Just as importantly, this submission has initiated what hopefully might become an accepted means of developing a more enlightened, more balanced approach to the protection of freedom of expression in this country. Australia has tended to lag markedly behind other democratic countries in developing adequate safeguards to balance individual and community rights in the protection of civil liberties. In this submission, however, the authors have collected together many of the important suggestions made overseas in recent years for developing new methods, better suited to the times, for protecting freedom of expression. In the process, they have made a number of important, constructive suggestions for adapting these to the Australian environment; suggestions which in themselves, even without the other valuable discussions, make this submission a worthwhile acquisition.

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