BOOK REVIEWS

ESSAYS ON MENTAL INCAPACITY AND CRIMINAL CONDUCT, by Helen Silving. Springfield, Illinois: Charles C. Thomas. 1967. xvi and 354 and (tables and index) 25 pp. Price in U.S.A. $15.50.

The essays presented in this collection deal with the problem of designating the mental states which in a rational system of law ought to qualify an offender for exemption from punitive responsibility and for potential treatment. After an introductory chapter on methodology, in which "guilt" and "responsibility" are scrutinised, an essay on "Mental Incapacity in Criminal Law" examines current legal formulations in many countries and offers the author's view of a better definition of the exemption for the mentally abnormal. A second essay deals with the disposition by the courts of cases in which persons are acquitted on the ground of mental incapacity. A third extremely topical contribution concerns alcohol and drugs, and problems relating to drug addiction. In a short concluding essay Professor Silving brings together various strands of her argument in a summary of the policy she advocates.

If the criminal law regarding the insane, the alcoholic and the drug addict are to be made satisfactory the author maintains that we must purge misconceptions rooted in primitive beliefs and practices, consciously and effectively secularise our law, and base it on the insight of modern science and on principles of the rule of law.

First comes the "purging". Vague or self-contradictory concepts of guilt and responsibility, judicial reasoning lacking in logical rigour, attitudes toward the insane or the intoxicated which stem largely from subconscious hostility or fear, even the methodological fallacies in some of the criticisms that psychiatrists have voiced—Professor Silving applies a corroding critical analysis to them all.

Next we seek the "insights of modern science". These the author finds mainly in Freudian psychology and the psychiatry that has largely been built upon it. She takes it as established that the result of human conduct reflects the actor's unconscious intent and on this basis contends that harm not consciously intended may justify the imposition of imprisonment or other security measures. Wherever possible, she says, unconscious factors bearing on evaluation of conscious action (e.g. unconscious inhibitions preventing consummation in cases of attempt) should be taken to limit or even to exclude imputation for punitive purposes. When there is a serious need for community protection, non-punitive intervention predicated not upon guilt but upon danger is warranted. We are to take account of such matters as "unconscious foresight" and to become acquainted with a "natural intent" previously unknown to the common law. Even in the case of a criminal attempt

that succeeds, the degree of responsibility is to depend to some extent on the probability of success with the particular method used. The man who intends to kill another, and does so, commits a less serious crime when he uses a pin than when he uses a gun. The method used is said to be indicative of his unconscious attitude towards the killing and thus an index of his total responsibility. By similar reasoning it is concluded that where a man uses intoxication as a means of crime the court should weigh the ensuing impairment of skill (reducing the chance of successful accomplishment of the crime) against the reduction or elimination of inhibitions that might hinder performance. The court should consider the intoxication as a mitigation if on balance the chances of consummating the crime were reduced.

Thirdly, the author adheres with absolute firmness and conviction to the "rule of law" and the principle of legality in every aspect of dealings with the mentally incapacitated. Confusion of criminal and administrative institutions, she points out, is dangerous to individual liberty, and she insists on clear demarcation between penal treatment, non-punitive measures ordered by a court in a criminal case, and "welfare dispositions" by civil tribunals. Lord Devlin's views on the scope of the criminal law are rejected. "The position adopted by the Wolfenden Report is a dictate of legality." The book is a superbly restrained piece of writing, in a low key throughout, but warmth of feeling may be detected in such passages as the following (referring to alcoholics and drug addicts):

> Even when commitment to an intoxicant is legislatively recognised to be a "disease", and thus immune from punishment, the unprincipled character of our law of civil measures permits dubious methods guised as welfare state action to suppress civil liberties. The over-all picture is incoherent and limitations imposed upon man's power over man are not clearly drawn, so that there is ample opportunity for making the most defenceless individuals the victims of unconscious sadistic public aggression.

In Professor Silving's view there is a greater social danger in adopting a criminal law which is wholly oriented to the personality of the individual and requires no specific act to warrant state intervention than there is in leaving potentially dangerous personalities at large. If a grave act has been committed and "measures" of security are required (e.g. where a person is acquitted on account of insanity) the author argues that the period of compulsory hospitalisation cannot properly exceed the maximum period of the sentence of imprisonment that could be imposed on a sane offender. Since she suggests that further detention can then be secured, if the detainee is still dangerous, by civil proceedings, insistence on the initial maximum period appears doctrinaire. Not all readers will assent to the proposition that "the community or a popular majority has no discretion in a democracy to create crimes". Nor will they all concur in the view that a general rule of compulsory institutionalisation of drug addicts as a condition of appropriate treatment impinges on the constitutional rights of *the physician.*

However we may define responsibility for the purposes of the criminal law, psychologists and psychiatrists have adduced scant evidence, if any at all, for extending the age of irresponsibility to twenty-one. Professor Silving does not argue for such an extension. She does say, however, that no adult who commits a crime should be subject to aggravation of punishment on account of crimes committed during minority.

Turning specifically to insanity, this book contains a wide-ranging survey of formulae used in many systems of law, and subjects them all to devastating scrutiny. Least satisfying is the discussion of the *McNaghten* rules. To say that the McNaghten test "takes the defendant's knowledge that his conduct is wrong as proof of his responsibility" might be acceptable, but the author says it is taken as proof of his sanity. She criticises the test as requiring proof that the accused knew his act to be contrary to law, saying that such knowledge is not required in the case of a healthy person. But healthy persons do know that murder is contrary to law; and it is not illogical that the presumption of knowledge is irrebuttable in their case but rebuttable in the case of the insane. Of the *Durham* test, exempting from liability conduct that is "the product of mental disease or mental defect", Professor Silving says: "What was simple error in the New Hampshire case turns into absurdity in *Durham*." The "product" feature of the test can never be proved. The test involves "a presentation of psychological reality known to be fallacious".

The American Law Institute's Model Penal Code, and the present German provision, fare no better. In so far as they depend on investigation of the offender's capacity to appreciate the unlawfulness of the act and to act in conformity with this appreciation, one must ask: "Could he have acted otherwise than as he did?" A test of this type cannot operate functionally, i.e. the question cannot be answered with reasonable certainty on the basis of the testimony of witnesses.

What, then, is insanity, in the author's view? She quotes with approval a statement by Dr. Roche that "mental disease" designates an altered internal status of the individual *vis-à-vis* his external world as interpreted by others. Her interpretation of this definition is, however, astonishing. Insanity *per se*, we are told, does not exist: it is a qualification by others of a person's functioning with regard to others. "Robinson Crusoe could not conceivably be insane."

On the author's view of the proper scope and function of criminal law some who are now held "responsible" should be exempted from criminal liability and subjected to security measures in proportion to the danger they present to society. This widening of the insanity exemption would be achieved under the formula propounded by the author, which is as follows:

> No punishment shall be imposed upon a person if at the time of engaging in criminal conduct and for some time prior thereto his integrative functioning was so impaired that he had a very considerably greater difficulty in complying with social demands than does the majority of the members of the community.

It will be noticed at once that Professor Silving's criticism of other tests may be applicable to her own. Is it not impossible to assess the relative degree of difficulty in complying with social demands? Can we really discriminate with certainty between temptations that are irresistible and temptations that are not resisted? The author meets this objection by saying that the term "difficult" is used in an objective sense and is directed at the expectability of a conduct in the light of experience. A person is exempt if he belongs to a category of persons who in fact do not in most situations conform to social demands and rules.

This seems to mean abandoning any distinction between the insane and the professional criminal. The proposed test appeared to make such a distinction by its reference to the reason for non-conformity. But if persistent non-conformity is to be taken as sufficient proof of greater difficulty in conforming and thereby to warrant exemption from criminal responsibility the proposed test cannot be regarded as acceptable.

Previously the author has insisted that the concept of "lack of capacity to conform to the requirements of law" is most precarious. She implies that it cannot be psychiatrically proven. If this is a fatal objection to a test in which this concept is embodied, is not a similar objection completely destructive of the test now proposed?

Dealing with persons under the influence of alcohol or drugs, Professor Silving argues most persuasively that treatment by measures is more appropriate than punishment, and that the rationale of the exemption for mental incapacity applies also to them.

Throughout all these essays the author is seeking to eliminate outmoded concepts and prejudices and to devise rules and concepts rationally based on the findings of psychology, psychiatry and sociology. Our criminal law is desperately in need of critical examination of this kind, and this is an outstanding contribution, exceptional both in its sophisticated methodology and its interdisciplinary range.

It is not, however, an easy book to read. Most lawyers in this country are familiar with legal jargon but not with that of other social sciences and may have to pause over "unspecificity of recidivism", "psychoetiologically", "heuristic theory", "scriptural hermeneutics", "impressindible" and like terms. Typical of the author's style are these two extracts:

> As a matter of sound policy oriented to the operational consequences of a disposition rather than merely to its semantic implications, addiction ought to be included within the general mental incapacity exemption.

> Responsibility should be defined as a normative connection of conditions and consequences of attribution of answerability for an act or an event or a combination of such phenomena to a person.

To this difficulty may be added other unfamiliar (and, to me, irritating) linguistic usages (such as "evince" as an intransitive verb) and some highly dubious history. According to the editor, "mental illness, leprosy and venereal disease were all at one time thought to be problems of morality and therefore criminal". And we are told by Professor Silving that judicial review grew out of a "trial" of trial judges.

But these are small matters. The book does much to shed light on the problem of "irresponsibility". It is successful in harmonising the standpoint of the lawyer and that of the psychiatrist. It deserves to be read, and pondered, by all who are anxious that the law affecting the mentally disturbed be the best that can be devised.

I. D. CAMPBELL.

CRIME IN NEW ZEALAND, by the Department of Justice. Government Printer, 1968. 417 pp. (including index). New Zealand price $4.50.

This is a must for anyone with the slightest interest in criminal law or criminology in New Zealand. It is the first attempt to make generally available and to analyse the large mass of statistical material on crime that has been collected in New Zealand in the past 40 years or so. But this is not just a statistical exercise; it is also a serious attempt to examine the material in the light of recent psychological and sociological developments both in New Zealand and overseas. In this respect it invites comparison—and favourable comparison at that—with its United States counterpart, the *Report From the President's Commission on Law Enforcement and Administration of Justice* (1967), which was produced with far more resources than were available to the Justice Department and its assistants in this study.

Crime in New Zealand does not purport to be a complete blow by blow discussion of every aspect of offending against the criminal law. It does not for example contain any extended discussion of traffic offences, breaches of local body by-laws and public welfare offences which together make up the numerical bulk of the work of the courts. Rather it is concerned with what may be termed the major offences, homicide, sexual offending, violent offences to the person, cruelty to children, abortion and dishonesty as well as with what it describes as "petty offending", which term is used mainly to describe the rag-bag collection of offences under the Police Offences Act 1927. As well as discussing the incidence of these offences and making some attempt to categorise the offenders, the study considers a number of related matters: capital punishment, corporal punishment, female offending (as in most countries, crime is essentially a masculine enterprise), bail and remand and suicide and attempted suicide (attempted suicide is of course no longer an offence in New Zealand but the material has been included largely because of widespread discussion in recent years of the relation-

ship between murder and suicide). As in England, quite a significant proportion of those who commit homicide in New Zealand commit suicide shortly thereafter.

Any review of this wealth of material must necessarily be selective also, but some of the highlights should be noted. This is a cautiously liberal document, in tune with the Department itself and its Minister since 1961, the Hon. J. R. Hanan. Mr. Hanan is well remembered for his able handling of the 1961 fight against capital punishment which was finally won with Opposition and a handful of Government votes. The chapter on homicide contains a very thorough discussion of the arguments on this difficult question as well as detailed accounts of the careers of the eight murderers executed in New Zealand between 1952 and 1957. A very moving practical man's account of hanging is given in the words of a prison officer involved with the executions carried out between 1955 and 1957 when the last took place. His comments on the trivia of the workings of justice speak more eloquently than a volume of *Hansard* devoted to principle: for example, "A few days before the execution Foster developed an abdominal pain which was diagnosed as appendicitis. With solemn irony, arrangements were made for his transfer to hospital where a successful operation was carried out. He was quickly returned to prison, and hanged before the wound had healed." (page 70.) "After each hanging the white face-cloth covering the head and face was taken home by a senior officer to be washed and ironed for the next hanging." (page 71.)

The battle against capital punishment has been won, perhaps permanently if trends in the United Kingdom and the United States are any indication. But there are other areas of the criminal law where a growing body of opinion favours change and *Crime in New Zealand* considers some of these. One such area is that of male homosexual behaviour, a matter given added interest by the formation of the New Zealand Homosexual Law Reform Society and by the passage in the United Kingdom of a statute legalising homosexual acts between consenting male adults in private. (In New Zealand as in the United Kingdom before and after the recent legislation consensual homosexual acts between females are not unlawful.) The extent of conviction for homosexual acts between consenting adult males in New Zealand is not apparent from the annual criminal statistics which do not list separately consensual and non-consensual homosexual "assaults" since consent is no defence. The Department has made some attempt to remedy this inadequacy. In a 1965 study of 60 men imprisoned for indecent assaults on males it was found that only three had been convicted of offences against males over 21. On the other hand, adult homosexuals appeared more frequently among those released on probation in 1965. In a sample of 17 probationers, six had been convicted of homosexual offences with adults. Perhaps all that this indicates is a not unexpected difference in sentencing practices between those who have homosexual relations with minors and those who do so with adults. But in any event the figures are unlikely, because of difficulties of detection and perhaps even the use of the police discretion not to prosecute, to be more than the peak of the

iceberg so far as the existence of homosexual activity is concerned. Beneath the figures is a large area of human misery that could profitably be alleviated by a change in the law.

Another matter receiving widespread current discussion is abortion. *Crime in New Zealand* attempts to add to our statistical knowledge of the extent of criminal abortion in New Zealand. Obviously enough, the number of convictions obtained in any one year is no indication whatsoever of the incidence of this type of "victimless" crime. Some guidance may, however, be gleaned from the incidence of septic abortion in hospital records; since both spontaneous abortion and therapeutic abortion performed by a doctor have a very low rate of sepsis, it follows that most of the cases of septic abortion treated in hospital are attributable to criminal abortion. It has been found in studies both in New Zealand and in the United States that the proportion of spontaneous abortions is about seven per hundred of live births. "In 1964 there were 62,459 live births and if it is assumed that spontaneous abortions can be calculated as 7 per cent of live births, there would have been 4,372 spontaneous abortions. In this year 4,716 cases of abortion came to public hospitals and medical statistics record that 76 of these cases were induced legally for medical reasons. If all cases of spontaneous abortion were treated in public hospitals (which is unlikely), a simple calculation shows that 268 of the abortions treated in public hospitals were illegally induced. (A similar calculation for 1963 gives a figure of 327 illegal abortions.) The assumptions implicit in this calculation are such that the estimate is likely to be a minimal one. Nevertheless, it is a more realistic estimate of the frequency of abortion than is the number of people sentenced, though it would not have been physically impossible for the three people sentenced for abortion in 1964 to have performed all of these abortions." (page 299.) In addition to these two or three hundred a year there are a completely unknown number of women who have illegal abortions unattended by complications which necessitate hospital treatment. Any estimate of their numbers is entirely speculative. Two interesting trends in the figures are worth mentioning—juries seem to be much more ready to convict persons charged with abortion than in the 1930s and the rates of criminal abortion have dropped considerably since the 1930s and appear to be dropping still.

Many people feel disquiet about various aspects of the Police Offences Act which one suspects would have undergone a thorough revision some years ago but for the intransigence of police officials who feel that its vagueness of language makes their task more simple. Some of the reasons for disquiet have been noted in *Crime in New Zealand:*

> Such offences as being idle and disorderly or being a rogue and a vagabond cover a miscellany of conduct and go some distance towards punishing status and associations rather than specific acts. For example, an idle and disorderly person includes a person who is the occupier of any house frequented by reputed thieves or persons who have no visible means of support, and a person who habitually consorts with such persons. Strangely

> enough, although it is an offence to consort with a "reputed" prostitute, it is not necessarily an offence to be a prostitute, reputed or otherwise. (page 16.)

> The idle and disorderly sections, however, constitute only one example of petty offences with a wide scope. The offences of disorderly conduct and offensive behaviour can be, and occasionally are, used in a manner which some would regard as being at least potentially dangerous to civil liberties.

> Recent convictions following acts of protest by dissenters deserve reflection. It may not be going too far to say that as the law stands, and accepting the correctness of the court's decisions, "offensive behaviour" and "disorderly conduct" can mean anything that is distasteful to, or annoys the majority. The protester poses a difficult problem for the police and for the law in a democracy but if freedom of expression means anything, it means freedom to express publicly highly unpopular views, and to express them not merely in remote and scholarly journals but to ordinary people. (page 17.)

The important question of when a person should be imprisoned to await trial is discussed in the chapter on "Bail and Remand". Stress is placed on the presumption of innocence and on the importance to one charged with an offence of being at liberty to assist in the preparation of his defence and on the administrative problems associated with the incarceration of remand prisoners who are supposed to be kept separate from other prisoners. But there are other factors which should be stressed also—the importance to a man who may well be acquitted or at least sentenced to something other than imprisonment of keeping his job and continuing to provide for his family. There is also some American evidence, which it would be interesting to follow up in New Zealand, that defendants on bail who retain their jobs are more likely to be placed on probation after conviction than defendants kept in custody pending trial. (Note, "Administration of Bail in New York", (1958) 106 U. of Pa. L.Rev. 693.) However, the most significant question raised by the chapter is whether the practice of requiring sureties discriminates against certain classes of person—Maoris and persons in unskilled occupations who find it difficult to obtain friends acceptable to the police to act as surety. The available material is somewhat limited but it does indicate cause for concern in this direction. It also suggests that there is too much caution by judges, magistrates and the police in their approach to bail. Clearly more research is needed both on the issue of bail itself and on the closely related issue of the use of summons rather than arrest in as many cases as possible.

New Zealand is not the only country in which research and teaching in criminology have been slow in getting established—only a handful of American Law Schools offer criminology as part of a regular law degree.

The teaching of criminology is now well established at Auckland and a criminologist has recently been appointed to the Law School at Victoria. In conjunction with these developments *Crime in New Zealand* marks a significant forward step.

R. S. CLARK.

VICARIOUS LIABILITY IN THE LAW OF TORTS by P. S. Atiyah, B.C.L., M.A.(Oxon.): Butterworths, London 1967; lxi and 452 pages (including index). Price in New Zealand $12.00.

Those readers who are familiar with Mr. Atiyah's book on *The Sale of Goods* (now in its third edition) will not be disappointed by his recent venture into the field of vicarious liability. They will find the same clarity in analysing the cases and well reasoned exposition of principle that characterises his earlier work. Mr. Atiyah has chosen a fortunate area for his treatment. The only book of importance dealing with the doctrine of vicarious liability in the common law countries was Baty's *Vicarious Liability* published in 1916 as a hostile diatribe against the doctrine. This area of the law has long awaited the careful analysis and systematic treatment given to it by this new book.

In his preface Mr. Atiyah says that he has written mainly for practitioners, but this book is far more than a compilation for the ready digest of practitioners. In the absence of any other text on this subject practitioners will doubtless find the book of great assistance but in this reviewer's opinion, the book is primarily an academic treatment of the law, and its greatest value will be to students and teachers and those who are concerned with law reform. Mr. Atiyah is concerned not only to present an accurate exposition of the law as it stands, but to argue for a consistent approach where lines of authority diverge as well as to examine the policy factors which have a bearing on the doctrine.

In Part I of the book the doctrine is looked at in relation to the legal system generally in two chapters on The Nature of Vicarious Liability and The Social Justification of Vicarious Liability. In Parts II and III the discussion concerns persons for whom the employer is vicariously responsible. Atiyah regards the doctrine as having a wider applicability than in the master and servant relationship, and considers that liability may arise outside this relationship for the acts of "agents". He frankly recognises that there is an irreconcilable conflict in the cases to whether there is any general liability placed on a principal for the acts of his agents. He prefers to limit liability for agents to certain special situations including fraudulent misrepresentations, partnership, joint enterprises, vehicle drivers and solicitors.

With respect to liability for servants, Atiyah argues that whereas the cases have distinguished a contract of service from a contract for

services, no general principle can be seen which will readily distinguish the two. The "control test" is useful in many situations but is only one of several factors which the courts have considered. In a useful chapter he sets out in detail the cases relating to particular types of employment —builders, actors, salesmen, doctors, and nurses, teachers and taxi drivers. It is perhaps only in this limited and pragmatic fashion that one can assert with any confidence the way in which the courts will classify a particular type of occupation. Unduly scant treatment is given, however, to the organisation test propounded by Denning L.J. in *Stevenson, Jordan and Harrison Ltd.* v. *MacDonald and Evans* [1952] 1 T.L.R. 101, C.A. and adopted in several later cases. This test is dismissed as being "suspiciously like a restatement of the problem rather than a test for its solution". Yet is it not on the basis of the question: "Is this man a part of my organisation?" that an employer decides whether or not to include him in his public liability insurance cover? This relationship between the duty to insure and the organisation test is not explored at all.

Another area which would have deserved more detailed examination is the vicarious liability of the Motor Insurance Bureau (in New Zealand, the Third Party Motor Insurance Pool) but the reader is given only a passing reference at page 134.

The second half of the book contains a lengthy and extremely useful treatment of the course of employment and liability for independent contractors. Salmond in his *Law of Torts* (14th ed. 1965) 658 is taken to task for his definition of the course of employment. Although the courts have long paid lip service to the Salmond formula, Atiyah shows that they have in fact decided the question on a broader and more common sense basis, and he advocates a reformulation of the principle. There is not space in this review to give the question the attention it deserves and the reader is referred to pages 175-190 of the book to a passage which should certainly not be ignored in any future consideration of this subject.

The printers are to be congratulated on the attractive presentation of this book and the author on his detailed and useful table of contents and liberal use of sub-headings. New Zealand readers will be pleased to know that unlike many English texts there is extensive reference to New Zealand and other Commonwealth case law. On a rough count, the author has referred to 38 New Zealand cases, several of them being given treatment in the text.

P. D. McKENZIE.

THE LAW AND PRACTICE RELATING TO CROWN LAND IN NEW ZEALAND by J. A. B. O'Keefe, B.A., LL.M., Butterworth and Co. Ltd. Wellington, 1967. xxxi and 374 pp. (including index). Price $8.50.

Of the three species of land law in New Zealand, the law of Crown land alone has been long denied a full written exposition which would clear a path through the tangled mass of legislation on the subject. If, for no other other reason than that it attempts to fill the gap, O'Keefe's study should have been welcomed by the profession and the student alike. However, regrettably the book does not entirely live up to its expectations. The author, in his preface, explains his intention to present "a succinct but exhaustive and single-minded treatment of the law relating to Crown Land", with particular emphasis on a "central theme"—namely the Crown Lease. As an exposition of Crown land the book cannot be regarded as a success. Had the book been limited to the central theme, and entitled, "The Law and Practice of Crown Leases", the value of the book would have been greatly enhanced. O'Keefe has, however, attempted to deal with Crown land in a more exhaustive manner. This, it is respectfully submitted, is where the book fails, as other aspects of Crown land are given only a most superficial and sketchy treatment.

In reviewing the book, one might ignore misprints such as that appearing on page 13, where "statutes" appears for "status", but it is more difficult to ignore the reference, both in the table of statutes and on page 116, to the Land Act 1881, which appears never to have been passed.

The study of Crown land opens with an introductory chapter (Chap. 1) which, apart from passing references to material contained in later chapters, is an attempt to establish a definition of Crown land. To this end, one would have expected a purposeful discussion which would correlate and analyse the common law provisions and the multitude of statutory definitions. Instead, the author presents an apparently unconnected collection of definitions culled from the statutes themselves.

For other reasons Chapter 1 is also unsatisfactory. In referring to the definition of Crown land in the Reserves and Domains Act 1953, the author, as part of the text, states "Crown land [in this Act] has the same meaning as in the Land Act 1948", which latter definition he had set out at length on pages 1 and 2. The Mining Tenures Registration Act 1962 receives similar treatment, and one feels that footnotes would have been more appropriate. Furthermore, the author appears to lose track of his initial intention of providing a collection of definitions, when, coming to the Housing Act 1955 (on page 5), he merely makes and amplifies the statement that "State houses may be alienated by cash sale or deferred payments".

One matter, which is obvious by its omission from Chapter 1, is the extent of Crown rights over the foreshore. This is briefly mentioned in connection with the Harbours Act 1950. Even if the book went to press before the decision of the English Court of Appeal in *Alfred F. Beckett Ltd.* v. *Lyons* [1967] 2 W.L.R. 421, one would have expected references

to such cases as *Re the Ninety-mile Beach* [1963] N.Z.L.R. 461, *Keepa* v. *Inspector of Mines* [1965] N.Z.L.R. 322 and *Secretary of State for India* v. *Siri Rajali* (1916) 85 L.J.P.C. 222. These are not referred to in Chapter 1, nor elsewhere in the book. Instead, there appears the repeated statement that "Foreshores are sacrosanct".

Chapter 2 is an attempt to illustrate the distinction between Crown land and private land, and is hardly more successful than Chapter 1. Indeed, it would have been much better if the two chapters had been combined in a continuous discussive text.

It has been suggested earlier that it is the chapters more intimately concerned with Crown leases which the author handles most satisfactorily. Standing alone these would have produced a most useful book as they form the central part of the structure. Even here, however, there is no lack of shortcomings. For example, one wonders why some of the earlier chapters on this aspect of Crown land are merely collections of tabulated summaries (*vide* Chapters 4 and 5), or why so much space is devoted, at the beginning of Chapter 13, to such elementary matters as the Roman Law concept of property. Further, the political history of the freeholding of Crown land appears to be dealt with at too great a length at the same point. This, together with the historical material, especially the so-called summary (it is a list!), on page 116, of statutes affecting Crown lands to 1877 would have made a useful introduction to the book, and been more effective as such.

As a study of Crown land the book is noteworthy, not by what it includes but by what it omits. Thus there are only brief and incidental references to the problem of state housing—surely important from the practitioners' point of view, and the relationship of the Town and Country Planning Act 1953 to Crown land and its development. The discussion of the effect on Crown land of the Land Transfer Act 1952, and its doctrine of indefeasibility of title could also perhaps have been given deeper treatment than it, in fact, receives.

On the whole, the impression of the book is a disappointing one. It appears, as a worthwhile study of Crown leases, to which have been appended a few loosely connected and hastily gathered paragraphs on other subjects to make the appearance of a treatise on Crown lands.

B. H. DAVIS.

THE JUVENILE COURTS, THE CHILD AND THE LAW by W. E. Cavenagh, Penguin Books, London, 1967. New Zealand price $0.90.

This, the latest law book to appear in Pelicans, provides a good background survey of the English juvenile courts. There can be little doubt that Dr. W. E. Cavenagh is particularly well qualified to write on the subject. She is both a barrister and a justice of the peace with considerable experience on both the magistrates' and juvenile benches. In England, of course, J.P.'s perform the bulk of judicial duties in the

Magistrates' Courts. However, it is not primarily as a lawyer or magistrate that she speaks in this book. Rather, she draws on her experience as a lecturer at Birmingham University, formerly in Social Studies, and more recently in criminology, and therefore presents more than a bare legal text.

There is much law in the book and of course this is English law, although the Child Welfare Act 1925 (N.Z.), incidentally the only non-English Act cited, is referred to on more than one occasion. The amount of English law in the book should not, however, deter the New Zealand reader. Legal discussion is kept to a minimum and throughout the book the emphasis is on the sociological and psychological aspects of juvenile courts. So much so, that the title becomes misleading. The book would have been better if it had retained the title under which it was first published in 1959, "The Child and the Courts".

This, in fact, appears on the title to Chapter 9. This chapter reveals the many barriers between the child and the adult, particularly when the adult is also a magistrate. Dr. Cavenagh points out that children have their own, often erroneous, impressions of the court and its officials—for example she cites the views of a fourteen-year-old boy on the function of the probation officer as—"a man that lays in wait to catch you out and bring you back to court" (page 224).

Equally interesting is the discussion of the difficulties of communicating with children in court, because the meaning, if any, which they attach to words may differ according to their age, intelligence, education and social background. Two examples from the book should suffice to illustrate this. On page 224 the example is quoted of a child who interprets the word "magistrates" as "majesties", and again on page 225 "a comment from the bench as 'that was a mean and spiteful thing to do and not smart at all' loses half its force at the receiving end" when the child uses the term "spiteful" in an appreciative sense, as when admiring a successful practical joke, and "smart" refers solely to clothing.

Such factors, the author points out, not only make it difficult to help the child, but render it very necessary to know exactly whether or not the child is aware of what is happening, or fully understands the charge against him.

There is much else in the book worthy of comment, and it is not possible to do full justice to it in a short review. There is, for example, a sound discussion of the merits and effectiveness of the various penalties and orders available to the courts; of the value of remand homes and social reports; and of the police experiment in Liverpool, Birmingham and other cities, through the juvenile liaison schemes, which seek, by contact with children and their homes, to prevent them coming before the courts, or to understand why they commit offences.

All this is very useful and enlightening, and makes the book one which ought to be read by all who are interested in the welfare of children, or who are concerned with the workings of the children's courts. Although an English book, it is of undoubted value to the New Zealand reader.

B. H. DAVIS.