A wider conclusion can also be drawn. It is that application of economics to law can be useful. The usefulness is of course limited. It aids the understanding of the consequences of law and enables informed policy decisions to be made. Yet Law and Economics can yield a distinctive understanding of law against a background of human behaviour.

Economics *can* be usefully applied to law.

Book reviews

CRIMINAL LAW by Peter Gillies, Law Book Company Ltd., Sydney, 1985, lvii + 668 pp. (including index, table of cases, and table of statutes.) Reviewed by Simon France.*

This book undertakes a demanding task. It sets out to consider "the substantive criminal law in the three non-Code states of New South Wales, Victoria and South Australia". The author has been ambitious in his coverage as he discusses not only general principles but also many of the more serious specific offences. There are seven major divisions: Introduction, which includes a discussion of the elements of a crime and the concept of strict liability, Indirect Participation in Crime, The Criminal Defences, Property Offences, Offences against the Person, Derivative Offences (the author's label for the inchoate offences) and Miscellaneous Matters, which include a consideration of standard statutory words, fraud, possession and offences against justice. There is a good index and a Table of Cases which, though adequate, has some annoying features. (For example, the leading English decision of *Caldwell*[1] may be found only under *Police, Commissioner of* v. *Caldwell.*)

That the book is concerned with non-Code Australian states does not of itself prevent it from being of assistance to the New Zealand reader. Each of the states has codified a large number of offences, although murder (Vict.), manslaughter (Vict. and N.S.W.) and conspiracy (N.S.W. and S.A.) remain common law crimes. Similarly a New Zealand audience could look to the discussion of general concepts such as mens rea and actus reus, and the general defences. A potential New Zealand market exists therefore, but unfortunately the execution in those areas in particular does not always reach the required standard. Consider, for example, recklessness — that area made so turbulent in recent times by Lord Diplock's judgment in *Caldwell.* The book's treatment of this development is woefully inadequate. In a little over one page the *Caldwell* definition of recklessness is given and the point made that it introduces an objective approach. It is then noted that *Seymour*[2] applied the new definition in the context of negligent manslaughter but that the English Court of Appeal in *Satnam*[3] did not apply it to rape. There apparently the discussion terminates although diligent reading will find the author's own brief comment on *Caldwell* four pages on. This, potentially the most important of all the references to *Caldwell,* is not noted in the Table of Cases. Gillies' view is that it is unlikely *Caldwell* will find a foothold in Australia. He notes that the case is "somewhat radical" and that if pressed to an extreme it would mean serious offences could be committed without mens rea, i.e. without a requirement of intention or subjective recklessness. For this reason he believes the Australian courts are unlikely to follow it.

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1 [1982] A.C. 341.
2 [1984] 2 A.C. 493.
3 (1983) 78 Crim. App. R. 149.

Such an argument simply states a consequence of *Caldwell,* albeit in the author's view a disagreeable consequence. It does not amount in itself to an explanation of why Australia will be spared the "new recklessness". Anyone familiar with the enormous controversy over objective recklessness would expect, indeed demand, a much fuller treatment of the topic. The author could have considered the arguments for and against, or at least given one reference to some of the vast quantity of literature that undertakes this task. Alternatively, its potential impact in Australia could have been considered in some depth. To do neither is to ignore an important development in the criminal law, a development which, however undesirable, will not go away simply because it is so labelled.

This weakness in the approach to recklessness is symptomatic of a general complaint with the book. It is that it is altogether too descriptive. The author appears to have decided that the proper approach is simply to state the law. He does not analyse sufficiently how the law reached the position it has and on too few occasions does he venture his own opinion on the desirability of the law as it exists. Take, for example, the discussion of constructive intention. The author does a good job in marshalling the available authorities which suggest there may exist a concept of constructive intention. At the conclusion the question is posed, "Should there be a doctrine of constructive intention?"[4] In fifteen lines it is purportedly answered. The justification for such a doctrine is stated and it is noted the effect would be to turn offences of intention into offences of recklessness. That, however, is where the section ends. The reader is left with no idea whatsoever of what the author thinks about the doctrine or even what the disadvantages and advantages would be. The end product is unsatisfying.

There is a common theme to my criticisms. They are not so much an attack on what is said but rather a comment on what is not said. With a book that is already over 650 pages in length it might perhaps be claimed that to suggest not enough has been said is to take an impractical stance. The answer is that it is a question of how one best utilises the space available. A balance must be drawn between coverage on the one hand and greater analysis and comment on the other. I would suggest this book errs too heavily on the side of the former.

The presentation and layout of the book are good. The author's style is not one which would appeal to everyone. In particular many may think that too many parentheses are inserted at the expense of easy reading; e.g.[5]

> A standard conception of intention is that D has intention where D acts (or omits to act) with the purpose (or object) of bringing about the event in question (that is, the criminal harm). Another, similar formulation of it is that D has the intention to bring about an event when D decides to bring it about by D's activity (in inactivity).

In conclusion, this is not a book that will be of much use to the New Zealand reader. The book's purpose is to fill a gap identified by the author in the criminal law literature available to the Australian practitioner and student. It may be that it

4 Page 48.
5 Page 42.