CRIMINAL LAW. Fourth Edition. By J.C. SMITH & BRIAN HOGAN. [London: Butterworths. 1978. cxxiii+858 pp.]

With the appearance of this new edition, it is perhaps stating the obvious to say that this work is now regarded, and rightly so, as an established text and enjoys great popularity with both students and teachers alike.

The authors note that "the flow of case law has continued at an undiminished rate" (Preface). Accordingly, they have tried to take into account the changes in the law rendered by these cases, stating the law as at May, 1978. In this connection, one must mention the revision of the section on *mens rea* in the chapter on the elements of a crime. The authors have comprehensively and with a great deal of thoroughness analysed the new spate of cases *(D.P.P.* v. *Morgan* [1975] *2* All E.R. 347, *Hyam* v. *D.P.P.* [1974] 2 All E.R. 41 (H.L.), *R.* v. *Belfon* [1976] 3 All E.R. 46, and *Mohan* v. *The Queen* [1975] 2 All E.R. 193) and their effect on the concepts of intention, foresight and recklessness, and their relationship with one another. The authors consider the important question of whether a consequence can be said to be intended when it is foreseen as certain, as highly probable or merely as probable — important because it determines the scope of criminal responsibility for the consequences of an act. They suggest that *Hyam* is now authority for the proposition that a consequence which is foreseen as highly probable is an intended consequence (and accordingly, one for which criminal responsibility is imposed) and perhaps too, for the proposition that foresight that death or serious bodily harm is a highly probable consequence of one's act is a sufficient *mens rea* for murder! The cases of *Belfon* and *Mohan,* on the other hand, suggest that foresight of the probability of grievous bodily harm is not sufficient to constitute intent — a person intends a consequence only "if it is his purpose to achieve it or if he knows that the achievement of some other purpose is certain, or 'morally' certain, to produce the consequence in question" (p. 51). It would appear then, that the meaning given to the concept of intention in *Hyam* is much wider than in *Mohan* or *Belfon* and seems to overlap with the concept of recklessness as stated by the authors. Yet, they proceed to discuss the concept of recklessness on the assumption that "intention does not extend to consequences not desired but foreseen as probable or highly probable." Otherwise, the resulting overlap is awkward and makes the concepts (of intention and recklessness) "difficult to relate satisfactorily" (p. 52, fn. 12). Is one to conclude then that the authors feel that the meaning of intention as interpreted and extended by *Hyam* is too wide to be correct?

The important case of *Morgan* is given the full treatment that it deserves. The authors discuss it in relation to the concept of *mens rea* generally, and to the offence of rape in particular, as well as in relation to the defence of mistake. *Morgan* has now established that the *mens rea* in rape is not only an intention to have sexual intercourse with a woman without her consent, it can also be recklessness as to whether she consents or not. A mistake of fact or law which is inconsistent with that intention or recklessness is also incompatible with guilt. As the authors note, the significance of *Morgan* goes "far beyond the law of rape" (p. 70). The once-cherished principle that for the defence of mistake to avail it must be a reasonable mistake is decisively swept away by *Morgan.* To require that the mistake be reasonable is to convert the offence, in this case rape, to a crime of negligence and as *Morgan* has demonstrated, the *mens rea* in rape is either intention or recklessness. The authors note with regret that the furore created in the wake of *Morgan* (one remembers the charges of 'Rapists' charter' in the morning papers) has led to the enactment of section 1(2) of the Sexual Offences (Amendment) Act 1976: "It

is unfortunate that a matter of common sense should be enacted at all, particularly that it should be enacted in relation to one offence" (p. 401). One cannot agree more.

In the section on the defence of mistake, the authors, in a short and neat discussion, sum up the effect of *Morgan* in placing the so-called "defence" of mistake in the right perspective — where the law requires intention or recklessness with respect to some element in the *actus reus,* the plea of mistake is "simply a denial that the prosecution has proved its case" (p. 182). One wonders why such a matter of "inexorable logic", so simple now that it has been lucidly stated, could have gone unrecognised for so long?

The House of Lords decision of *D.P.P.* v. *Majewski* [1976] 2 All E.R. 142 has been incorporated into the discussion on the defence of intoxication. This decision confirms the rule, first stated in *Beard* [1920] All E.R. 21 that evidence of self-induced intoxication negativing *mens rea* is a defence only if the crime charged requires the proof of a "specific intent". But more interesting is the effect of the decision in confirming *Lipman* [1969] 3 All E.R. 410 — it recognised, as a rule of substantive law that, where voluntary intoxication is relied on in a crime not requiring a "specific intent" the prosecution need not prove any intention or foresight, whatever the definition of the crime may say; and "it follows that section 8 of the Criminal Justice Act 1967 has no application" (p. 186). As a result of this, the authors have had to omit arguments (made on p. 153 in the 3rd edition) that the drunkenness rule requires words to be read into section 8. In their analysis of *Majewski*, together with earlier authorities, to extract a consistent principle governing what are crimes of specific intent and crimes of basic intent (clearly a crucial classification as it affects the availability of a general defence to criminal liability), the authors conclude in a question-begging fashion: " '[a] crime requiring specific intent' means a crime where evidence of voluntary intoxication negativing *mens rea* is a defence" (p. 187). Their reason for proposing this: "the designation of crimes as requiring, or not requiring, specific intent is based on no principle but on policy" (p. 187). If that be the case then, wherefore the analyses of Lord Simon in *Morgan* and of Lords Simon and Elwyn Jones in *Majewski?*

The effect of *Haughton* v. *Smith* [1975] A.C. 476 on the law of attempts is considered by the authors in the discussion on impossibility. There are three *post-Haughton* v. *Smith* situations in which an offence is impossible to achieve:

(a) where the objective which D (defendant) has in view will not amount to a crime even if it is achieved

(b) where the objective which D has in view would be a crime if achieved but it cannot be achieved because the subject matter does not exist

(c) where the objective which D has in view would be a crime if achieved but cannot be achieved because the means used is inadequate to accomplish it.

Haughton v. *Smith* decides that only in situation (c) may D be held liable for an attempt. The authors do not at any stage make use

of the fundamental distinction between a legal and factual impossibility. In Singapore, only a legal impossibility will avail D; he is liable for attempt in cases of factual impossibility. The case of *Ring, Atkins & Jackson* (1892) 61 L.J.M.C. 116 which has been swept away by *Haughton* v. *Smith* remains entrenched in illustration (b) to section 511 of the Penal Code. There is no sound basis for distinguishing between 2 types of factual impossibility — where D fails because the subject matter does not exist and where he fails through inadequacy of means. In both cases, he has attempted a crime known to law. The authors find the new position regrettable and observe that only legislation can restore the *pre-Haughton* v. *Smith* position.

Certain revisions have been made in the chapter on Theft and Related Offences. The section on appropriation as unauthorised dealing with property has been expanded to include the decisions of *Skipp* [1975] Crim. L.R. 114 and *Meech* [1973] 3 All E.R. 939, C.A. which illustrate the authors' view of appropriation. In relation to "consent & fraud", the authors suggest that the difficulties of determining whether fraud does or does not have the effect of preventing the passing of ownership of property from P. to D. behoves the prosecution to charge D. with obtaining by deception, if D. has by fraud caused P. to part with his property. Failure to observe this common sense approach, as the authors point out, converted *Lawrence* [1971] 2 All E.R. 1253 from a simple case of obtaining by deception to a complex case of theft. The latest case of *Edwards* v. *Ddin* [1976] 3 All E.R. 705 shows that there is a limit to which circumstances amounting to obtaining by deception are capable of redescription as theft. The whole section on obtaining by deception has been substantially reorganised and rewritten incorporating the new spate of cases: *Greenstein* [1976] 1 All E.R. 1 (C.A.), *Charles* [1976] 3 All E.R. 112, *D.P.P.* v. *Ray* [1973] 3 All E.R. 131 (H.L.), *Rashid* [1977] 2 All E.R. 237 and *Donkas* [1978] 1 All E.R. 1061 (C.A.).

Elsewhere in the book, the authors have taken into account the. changes rendered by the 1977 Criminal Law Act. In relation to the classification of offences, the changes made affect criminal procedure rather than the substantive law as the Act aims at simplifying the existing classification of offences and to get a better distribution of criminal business between the Crown Court and Magistrates' Courts.

The 1977 Act also attempts to reform the law of conspiracy by limiting the scope of the offence of conspiracy. To that end, it has abolished the offence of conspiracy at common law (except in so far as it relates to conspiracy to defraud) and created the new offence of statutory conspiracy. In the authors' opinion, the reform effected is limited and provisional only: "it is moreover an ill-drafted piece of legislation presenting numerous problems of interpretation and it is hoped that a more thoroughgoing and effective reform will not be long delayed" (p. 216).

This new edition also includes a commentary on the 1976 Prevention of Terrorism (Temporary Provisions) Act.

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