mon Market receives unduly brief treatment in the author's chapter on International Institutions.

Although Starke's Introduction has now grown by more than half since its first edition, the author has been able to keep the thickness of the book down by the use of thinner paper. The new edition is remarkably free of printing mistakes. One of the few dissents the reviewer likes to assert concerns Johann Kaspar Bluntschli: as in earlier editions, he is referred to as a leading 'German' international lawyer (page 11). However, although in later life he taught at German universities, is he not—like his famous namesake in 'Arms and the Man'—a Swiss? J. LEYSER*

Criminal Law and Punishment, by P. J. FITZGERALD, Professor of Law in the University of Leeds. The Clarendon Law Series (Oxford University Press, Oxford, 1962), pp. i-xi, 1-278 and Table of Cases. Australian price: £2 6s. 6d.

This book is the latest addition to that notable venture into regular law publishing by the Oxford University Press, the Clarendon Law Series. The series introduces itself as one which aims to provide 'general introductions to different fields of law and jurisprudence designed not only for the law student but also for the student of history, philosophy, or the social sciences, as well as for the general reader interested in some aspect of the law'. Further, the Series is not intended to provide substitutes for legal textbooks 'but a general perspective of legal ideas and problems which will make their detailed study most rewarding'. In my view at least two of the earlier publications in the Series, Professor H. L. A. Hart's *The Concept of Law* and Dr Rupert Cross's *Precedent in English Law,* have been much more than general introductions and have been properly hailed as major original contributions to the English literature on jurisprudence. This present book does not merit that sort of acclaim, but it does most admirably meet the stated aims of the Clarendon Series.

The book is divided into six parts. The first four deal with matters of substantive criminal law, the fifth with criminal procedure and those rules of evidence peculiar to criminal trials, and the final part with punishment. It is worth dwelling on the arrangement of the parts on substantive law, because it is an excellent one. The first matter considered is the hardy perennial 'What is a Crime?' This question is dealt with in the mode now associated so intimately with the work of Professor Hart: attention is directed to the general and usual characteristics exhibited by those activities our legal system makes criminal. The discussion is lucid and perceptive, but it is a great pity that Fitzgerald does not focus attention on the incident of conviction, as important an incident of crime as punishment. By convicting the guilty we perpetuate guilt as surely as Cain was marked for the first murder; the stigma was and still is regarded in our community, usually, as inflicting as severe a hurt as does deprivation of liberty or property. In fact this point is excellently made by the author when he later discusses imprisonment, in his section on 'Punishment' (page 244). After this brief introduction we are launched at once into 'crimes', divided into offences of violence, dishonesty and so on. It is only after the particular that the reader is introduced to 'crime'—the 'general principles' (acts, intention, strict

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liability, defences, special persons) which occupy the first parts of each current English textbook of criminal law.

Fitzgerald's mode of presentation is so much better than the traditional that one is led to hope that upon reading this book other English text writers may pay it the supreme compliment of emulation. It is better because a consideration of particular crimes takes up some notions the reader already has and so engages his attention; it provides the sharp background for the later overlay of those principles applicable to all or most crimes. The description of particular crimes is sometimes brief but always clear. Attention is properly focussed on what Fitzgerald thinks are matters of vital importance in English criminal law today. Thus there is a lengthy discussion on the now-notorious case of Gypsy Smith,[1] which concludes with the sharp criticism which has been levelled at this case so often, namely, that it obliterates the distinction between the legal consequences of accidental and intentional killings. To me the most vicious result of Lord Kilmuir's curious edifice of bad authority and unsatisfactory reasoning is that it in effect means that an English jury no longer has the opportunity to disbelieve a Smith when he says 'I didn't mean it'; that jury must be instructed to disregard totally that sort of sworn evidence. English critics like Fitzgerald will no doubt acclaim the High Court of Australia's recent but already famous decision in *Parker v. The Queen*[2] wherein *Smith's* case has been unequivocally condemned as an aberration which Australian Courts are instructed to reject.

In the section dealing with crimes of immorality there is similar critical attention to the problems raised by the controversial 'Ladies' Directory' case,[3] which has figured in so many learned discussions in the periodicals since the House of Lords decided that the publisher and 'other persons unknown' were engaged in a criminal conspiracy to corrupt public morals. This case is reconsidered again by Fitzgerald in his later examination of those restrictions on the ambit of the criminal law determined by notions of justice. The short discussion there entitled 'The Principle of Legality' (page 168 ff.) is an excellent summary of the ideas which express themselves in the maxim *nulla poena sine lege*. But in its reference to the Eichmann trial (another instance of a recent important case receiving critical attention) it is misleading. It is of course true that the first argument against retrospective criminal legislation is that it is unjust to convict and punish a man today for conduct which was not denominated criminal yesterday, when he did the act. But there is surely an answering argument that meets this one if we deal with conduct which is and has been regarded by mankind as wrong and harmful since the time of Noah. In that light the Israeli Punishment of Nazis Law, though referring legislatively to conduct committed eight or nine years before the statute was enacted, is not deserving simple condemnation as a retrospective criminal law. It is in a context such as this that the dichotomy of acts *mala in se* and *mala prohibita* is so important; it is, incidentally, pleasing for me to learn that Fitzgerald does not voice the same sceptical views about the usefulness of this dichotomy as do many of his English colleagues.

The latter parts of the book, dealing with criminal procedure, and with

[1] *D.P.P. v. Smith* [1961] A.C. 290. [2] (1963) 37 A.L.J.R. 3.
[3] *Shaw v. D.P.P.* [1962] A.C. 220. See also the discussion in the book under review at pp. 8-10.

punishment are equally lucid and concise, and as critical in places of theory and practice as the substantive law parts. Fitzgerald does not shy off the philosophical examinations of such matters as punishment generally and capital punishment especially. This sort of writing is the most attractive aspect of the book. The reader is not only informed; he is also invited to examine critically the principles behind the practice of police, courts and prison-keepers.

I have read a review of this book which criticized it roundly because Fitzgerald's attempt to encompass 'Criminal Law and Punishment' in some 270 pages was said to lead to slim discussions of some substantive crimes, and at the same time include considerable critical consideration of questions of the day in the criminal law. With respect, I think that learned reviewer commits the cardinal reviewer's sin of demanding of an author that he write that book on that theme which the reviewer thinks he himself would have written—had he been commissioned. I have no hesitation in saying that this is a very good introduction to the criminal law especially because it contains not only a view of the rules of law but also critical examination and speculation about many of them. It is a book which may be confidently recommended to those embarking on a study of criminal law as the best introduction yet available on the English system. The usual reservation must be appended for Australian readers—English insularity here admits only *Stapleton's Case*[4] as a worthy addition to the common law heritage. And, with respect, a Select Bibliography which does not include Jerome Hall's *General Principles of Criminal Law* in a list of works for further reading is too select.

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Federal Government, by K. C. WHEARE, F.B.A., 4th ed. (Oxford University Press, London, 1963, Oxford Paperbacks No. 75), pp. 1-245, Bibliography, Table of Cases and Index, pp. 246-266. Australian price: 17s. 6d.

It is saddening to report that the fourth edition of Wheare on Federal Government in the Oxford Paperback series is a great disappointment. The cover of the book proudly announces that 'This fourth edition incorporates numerous additions and revisions'. The reader's appetite is whetted by this announcement as there have been several significant developments in the operation of federalism as a system of government since the publication of the third edition of this book in 1953. The federations of the West Indies and Rhodesia and Nyasaland were born, and have died, within this period. Both the Malayan Constitution of 1957 and the Nigerian Constitution of 1960 created federal systems of government and the subsequent developments in those countries have been fascinating to students of federal government. One would have expected to find the experience of these federations liberally drawn upon by the author to exemplify his general arguments and observations on federalism. Such, however, is not the case. Apart from noting their existence, Wheare ignores them.

Indeed it is difficult to find many 'additions and revisions' at all. This is certainly the case as far as the discussion of Australian federalism is concerned. For example, in Chapter VI Wheare discusses the question whether a central government can, consistently with the fundamentals of

[4] (1954) 86 C.L.R. 358.

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