its commodities. Alternatively, the matter may, perhaps, properly be considered as one appropriate for Government compensation.

On pages 130-137 Professor Fleming deals with actions for breach of statutory duty. The discussion forms part of a chapter entitled 'Standard of Care', and is itself entitled 'Statutory Standards'. There is perhaps an objection to this method of treatment. It is that a student may possibly not realize that the tort of breach of statutory duty is quite dissimilar from the tort of negligence, and that, as stated by Lord Wright in *London Passenger Transport Board v. Upson*:[2]

> . . . whatever the resemblances, it is essential to keep in mind the fundamental differences of the two classes of claim.

Unfortunately, *The Wagon Mound*[3] was reported after this very good book went to press. And this is a pity as the case raises some interesting problems. For example, as *The Wagon Mound* posits the same test for remoteness as for duty, does it now follow that no remoteness question will ever arise once a duty has been established: is such a case as *Thurogood v. Van Den Berghs & Jurgens Ltd*[4] a thing of the past? On page 191 Professor Fleming, for long a staunch and convincing critic of the Direct Consequences Test, states that 'It is perfectly consistent with a morality based on fault to exact that a man must take his victim as he finds him'. This statement has received judicial support. In *Smith v. Leech Brain & Co. Ltd*[5] Lord Parker C.J. stated that he was quite satisfied that the Judicial Committee in the *Wagon Mound* did not have in mind the 'thin skull' cases, and affirmed the continuance, after that case, of the proposition that a tortfeasor takes his victim as he finds him.

Other minor comments may be made. For example, on page 647 Professor Fleming deals with the summary settlement of disputes between husband and wife. Should not some reference have been made to the High Court decision of *Wirth v. Wirth*[6] as applied by the Supreme Court of Victoria in *Noack v. Noack*?[7]

But the above comments in no way detract from the excellent qualities of this book. Rather they are a tribute to the stimulation of interest which the book engenders. The various Australian reports contain a wealth of material, the full extent of which is perhaps not yet generally realized. Professor Fleming's book is an example of the rich harvest that can be garnered from Australian jurisprudence. The second edition continues the standard set by the first edition.

D. MENDES DA COSTA*

Criminal Law: The General Part, by GLANVILLE WILLIAMS, LL.D., F.B.A. 2nd ed. (Stevens & Sons Ltd, London, 1961), pp. i-liv, 1-929. Australian price £7.

Good wine may need no bush, but the unanimous acclamation of the connoisseurs surely indicates that the vintage is not just good but quite superb. When the first edition of this book appeared in 1953, Dr Williams had already established himself as a writer of extraordinary merit on the

[2] [1949] A.C. 155, 168. And see *Darling Island Stevedoring Co. Ltd v. Long* (1957) 97 C.L.R. 36.

[3] *Overseas Tankship (U.K.) Ltd v. Morts Dock & Engineering Co. Ltd* [1961] 2 W.L.R. 126. [4] [1951] 2 K.B. 537. [5] [1962] 2 W.L.R. 148.

[6] (1956) 98 C.L.R. 228. And see *Martin v. Martin* (1959) 33 A.L.J.R. 362.

[7] [1959] V.R. 137.

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common law. The very cordial reception accorded to *Criminal Law: The General Part* by academic and practising lawyers indicated that its publication had added more lustre to that reputation. It is fair to say that its appearance was also the most important event in English scholarship in criminal law since Stephen's great magisterial writings in the last century. In the eight years between the publication of the first and this, the second edition, the views propounded by Dr Williams in *Criminal Law* have been accepted, rejected, questioned, but always considered by nearly every writer on problems of the general part of the criminal law in England and indeed the whole common law world. Rarely can the second edition of a work have been assured of so warm and wide a welcome at the hands of those acquainted with the first.

The new edition, though basically in the same format as the first, is a book two hundred pages longer and more than five hundred cases fuller. There have been some changes in the presentation; the chapter on 'Mens Rea as affected by Ignorance of Fact' is now followed by chapters on 'Strict and Vicarious Responsibility' and 'Ignorance of Law', and only then is the question of participation in crime as principal or accessory considered—a much more rational arrangement than in the first edition, where this matter appeared before the consideration of strict and vicarious liability in cases uncomplicated by numbers. There are also re-arrangements of particular topics within the ambit of each chapter and some transpositions of matters previously considered in one context to another, such as the removal of a discussion of the criminal responsibility of one acting under hypnotic suggestion or influence from the first chapter, dealing with 'The Criminal Act', to Chapter 18, on 'Duress and Coercion'.

This last matter to which I have drawn attention may be taken as an instance of the further research and rethinking that Dr Williams has undertaken in the preparation of this new edition; it is no mere annotation of new English decisions and legislation to the 1953 text—and of course the increased bulk of the book, already noted, will have indicated that. Dr Williams concluded in 1953 that the better view was that a hypnotized person 'performs an act and is legally responsible, his condition going only to the question of punishment' (page 12)—a view largely produced by his acceptance of psychiatric doctrine that a hypnotized person cannot be forced to perform acts that are repugnant to him. His present view is 'that the dependency and helplessness of the hypnotised subject are too pronounced for criminal responsibility', a view largely produced by the acceptance of the result of modern psychiatric research, namely, that there is 'no basis whatsoever for the view that moral weakness in a hypnotised subject is a condition for the misuse of hypnosis' (page 769). The use and appreciation of the results of modern medical, especially psychiatric, research and investigation was of course one of the impressive features of the first edition, and continues to be a hallmark of the second.

Equally as impressive is the range of legal materials which Dr Williams has discovered and considered. The Australian reader will find all the great cases in his own jurisdiction, and indeed all the periodical literature stemming from Australia seems also to have come within the author's ken—a tribute to his research and, it is hoped, to the worth of Australian legal writing! Dr Williams continues to foster the valuable notion that there is a common law tradition by considering, sometimes at some length, these important Australian cases, as well as Canadian, New Zealand and American decisions and academic thought. He has been particularly ready to use the published Tentative Drafts of the American

Law Institute's Model Penal Code, which is a recent careful attempt to restate the rules of criminal law, as a 'valuable ally in the argument for more rational principles of the criminal law' (page v). This treatment of non-English authority has of course in no way affected Dr Williams' consideration of all the English cases of the past eight years, and there will be surely a thumbing of the index of cases to ascertain what is his view of the ways in which the House of Lords has wrestled with the great questions of intention in murder, the corruption of public morals, singly or in partnership, and the duty to play informer, all in the last two years. It is heartening to rediscover that this book is still properly critical, even of such august judicial endeavour, when the results of it may be considered out of accord with the principles of the criminal law. A public already acquainted with the author's view of *Director of Public Prosecutions v. Smith,*[1] as expressed in his articles in *The Times*[2] and the *Modern Law Review,*[3] will find them re-enunciated in somewhat different form, but with identical vigour and eloquence, in this book (at pages 94-99). The Victorian case of *The Queen v. Jakac,*[4] was available to Dr Williams, and he states mildly that the Court therein treated *Smith's Case* 'with reserve' (page 94). It would appear that a substantial body of Australian legal opinion shares Dr Williams' thoughts on *Smith's Case,* as witness two expressions, one judicial and one academic-*cum*-professional, made public after the publication of this work. In *Vallance v. The Queen,*[5] Windeyer J. said,

> If an accused gives evidence of what his intentions were, the jury must weigh his testimony along with whatever inference as to his intentions can be drawn from his conduct or from other relevant facts. . . . [A]lways the questions are what did *he* in fact know, foresee, expect, intend.[6]

And at the Twelfth Legal Convention of the Law Council of Australia, Mr J. L. Travers Q.C., of the Adelaide Bar, and Professor Norval Morris, delivered a paper entitled 'Imputed Intent in Murder, or *Smith v. Smyth*',[7] which propounds views substantially in accordance with those of Dr Williams.

In a book of this quality and range, there are, of course, many individual matters about which readers will take issue with the author. For my own part, I do not propose to do so here, within the compass of a short review. But there is one general matter to which I will refer in critical vein. In a book dealing with the general doctrines of the whole body of criminal law, why not a chapter on the principles which may be said to underlie this distinct branch of the legal system? There are propositions made throughout this book which refer expressly, or by implication, to what Dr Williams thinks those principles are—for example, his quite emphatic view that *conviction,* even without punishment, is a unique feature of the criminal law, and must be considered in postulating rules for responsibility (see pages 255 and following). It would be far less tantalizing and much more satisfying if there were an initial or concluding chapter or chapters in which those principles were collectively exposed. Finally, let me reiterate the remark which reviewers of the first edition

[1] [1961] A.C. 290. [2] 12 October 1960.
[3] Williams, 'Constructive Malice Revived' (1960) 23 *Modern Law Review* 605.
[4] [1961] V.R. 367. [5] (1961) 35 A.L.J.R. 183.
[6] *Ibid.* 195. [7] (1961) 35 *Australian Law Journal* 154.

made almost as if with one voice: we still await, with lively expectations enflamed by excellent articles from Dr Williams' hand in the *Criminal Law Review* and other journals, *The Special Part*. The great value of such a work may be safely assumed by every person who reads this book.

PETER L. WALLER*

The Citizen and the Administration: The Redress of Grievances, A report by JUSTICE. (Stevens & Sons Ltd, London, 1961), pp. i-xv, 1-104. Australian price 14s. 9d.

JUSTICE is an all-party association of lawyers in the United Kingdom concerned with upholding and strengthening the principles of the Rule of Law in territories for which the British Parliament is responsible, and with assisting in the maintenance of the highest standards of the administration of justice and in the preservation of the fundamental liberties of the individual. Since its inception in 1957, it has sponsored research leading to the publication of important reports on the problems of contempt of court, the need for revaluation of legal penalties, and the preliminary investigation of criminal offences. The present Report is the fourth in the series.

Some years ago, as a result of a piece of official maladministration which became known as the 'Crichel Down affair', the British Government set up a Committee, under the chairmanship of Sir Oliver Franks, to examine and suggest improvements in the machinery for appeal against decisions in disputes between individual citizens and official authorities. It was generally supposed, at the outset, that the purpose of this Committee was to prevent a re-occurrence of Crichel Down. But when the Committee examined its terms of reference, it decided that problems of that kind lay outside its competence. For, applying the literal rule of construction, you cannot examine the non-existent, nor can you improve it. And the trouble at Crichel Down arose because no machinery for appeal against or review of the official decision existed. The Committee apparently did not consider that to suggest the creation of needed machinery where none exists is perhaps to suggest an improvement—it probably thought it had enough to do if it stayed strictly within its terms of reference. At all events, its Report on Administrative Tribunals and Enquiries left untouched the problem of obtaining review of administrative decisions where no statutory procedure for review already existed. Shortly after the Franks Committee had reported, Professor F. H. Lawson, a member of the Council of JUSTICE, suggested that research into the institution of the Swedish *Ombudsman* (Parliamentary Commissioner for Civil Administration) might prove profitable. Ultimately, Sir John Whyatt Q.C., formerly Attorney-General for Kenya and Chief Justice of Singapore, was appointed Director of Research and a small Committee was asked to make a report. Its terms of reference were

> . . . to inquire into the adequacy of the existing means for investigating complaints against administrative acts or decisions of Government Departments and other public bodies, where there is no tribunal or other statutory procedure available for dealing with the complaints; and to consider possible improvement to such means, with particular reference to the Scandinavian institution known as the Ombudsman.

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