in his mind Sir Owen Dixon was heard to say to a brother Justice on leaving an orchestral concert run by the Australian Broadcasting Commission at the Sydney Town Hall: 'Very fine, but I still can't see what this has to do with posts, telegraphs, telephones and other like services'![2]

CLIFFORD L. PANNAM*

An Inquiry into Criminal Guilt, by PETER BRETT, LL.B. (Lond.), LL.M. (W. Aust.), S.J.D. (Harv.), (The Law Book Company of Australasia Pty Ltd, Sydney, 1963), pp. i-xvii, 1-228. Price £2 18s.

For want of a publisher, valuable dissertations too often lie unknown or virtually inaccessible in university libraries, and it is a happy circumstance that Professor Brett's thesis for the degree of S.J.D., Harvard, now appears in book form through the Law Book Company's commendable policy of encouraging works of scholarship. It deserves a warm welcome, for it is a lucid and fascinating examination of problems that lawyers tend to by-pass. In the 1960 Rosenthal Lectures, Lord Radcliffe remarked that the principles of law are, after all, no more than generalizations relating to human conduct, and he reminded us that the lawyer often stands too close to his subject to see in what direction he and his fellows are making.[1] The training and professional pursuits of a lawyer tend to produce an uncritical acceptance of legal assumptions regarded through long usage as fundamental, and the legally binding character of judicial pronouncements distracts attention from their customary conservatism. It is inevitable, of course, that legal thinking should be controlled in large measure by an attachment to the *status quo*. The human inclination is to take things for granted, and in any event it is easier to perceive the deficiencies of a system than to devise innovations that we can feel sure will produce better results; hence, *nolumus leges Angliae mutari*. But public respect for the law is a necessary condition of civilization itself, depending upon the law's ability to satisfy the ordinary man's feeling for justice and his insistent demand that this feeling should be visibly vindicated in the courts. This is particularly so with the criminal law, whose basic postulates are examined in this essay.

Dicey remarked somewhere that statute law reflects the public opinion of yesterday, and judge-made law the opinion of the day before. He was speaking of the nineteenth century, but Professor Brett would consider the comment still has substance. He describes his purpose as, firstly, to isolate and examine the underlying assumptions of the criminal law, and to show how they came to be accepted; next, to demonstrate that these assumptions have been proved unsound in many respects; and finally, to devise a basis upon which we may grapple with the problems of criminal responsibility in a fashion acceptable to the understanding of the ordinary citizen as well as of those professionally concerned with them. It is a praiseworthy undertaking, vigorously and learnedly performed. He finds the purely formal approach to the definition of crime inadequate, and

over the dissent of Dixon J. (as he then was), that s. 51 (v) gave the Commonwealth power to regulate radio broadcasting. S. 51 (v) provides that the Commonwealth Parliament has power to make laws with respect to 'Postal, telegraphic, telephonic, and other like services'. [2] N. 91, p. 64.

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[1] *The Law and Its Compass* (1961) 78.

wisely submits that crime as a word has more than one meaning, just as crime as a reality has more than one aspect. He espouses the view, surely right, that commonly a judgment resulting in a conviction for crime imports a condemnation for moral fault, and that a sound criminal law requires as its basis the notion of moral blameworthiness.

Chapter 3, in which Professor Brett discusses 'Guilt and Moral Fault', is stimulating, and readers may add to the references he gives R. L. Franklin's 'Dissolving the Problem of Free-Will'.[2] Within the editorially imposed limits of a review, there can, of course, be no useful examination of the thorny problem of free-will and its relationship to criminal responsibility, except to suggest that lawyers may regard as sensible the contention by Professor Sheldon Glueck[3] that for practical purposes there is not much use in asking whether or not man, in the abstract, possesses freedom of will, and that when the question of responsibility is raised, lawyers and psychiatrists should confine their attention to ascertaining whether a given defendant can fairly be said to have possessed, in the relevant situation, the capacity to make purposive choices between alternatives and to direct his actions accordingly. Incidentally, an unnecessary repetition on page 61 of Professor Brett's text seems to have been missed in revising the proofs. The three succeeding chapters, 'The Positive Analysis of Criminal Liability'; 'The General Defences and herein especially of Insanity'; and 'Voluntariness and Personality; and herein of Intoxication', all repay attentive study. The concepts with which the author deals are often elusive and protean, but his style has a clarity which is strengthened by an occasional semblance of dogmatism. Considerately, he summarizes in the concluding chapter the course of his argument and the essence of his contentions. 'Since the lawyer is concerned with the complexities of human behaviour,' he writes at pages 212 and 213, 'he cannot neglect the insights into the nature and meaning of that behaviour revealed by current research in philosophy and psychology. . . . My point is that a twentieth-century criminal law cannot satisfactorily be based on a seventeenth-century philosophy and an eighteenth-century psychology. The foundations have crumbled. It must instead be based, so far as possible, on a twentieth-century philosophy and psychology'. The point is surely well taken, and the task (which involves the application of the law and its concepts, overhauled and improved, to the conscious furthering of human happiness) is plainly an intellectually exciting and a socially worthwhile enterprise.

As a postscript, it may be noted that Professor Brett, who vigorously assails that unfortunate aberration, *D.P.P. v. Smith*[4] has now the satisfaction of knowing that the views he propounds have triumphed in this country. The High Court, speaking on this point through the Chief Justice, Sir Owen Dixon, has said that there are propositions in the judgment in *Smith's Case* that are misconceived and wrong, and that it should not be used as an authority in Australia.[5]

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[2] (1961) 39 *Australasian Journal of Philosophy* 111.
[3] Law and Psychiatry, *Cold War or Entente Cordiale?* (1962).
[4] [1961] A.C. 290.
[5] *Parker v. The Queen* (1963) 37 A.L.J.R. 3, 11 *per* Dixon C.J.
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