

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.

PETER L. WALLER*

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.

* LL.B. (Hons) (Melb.); B.C.L. (Oxon.); Barrister and Solicitor; Senior Lecturer in Law in the University of Melbourne.

federalism, give priority to the collection of its tax debts over similar debts owed to the regional governments. He examines the Australian position in some detail on pages 105-109 and states that the High Court has decided that the Commonwealth Government can give its debts such priority, citing *State of South Australia v. The Commonwealth*.¹ On pages 107-108 he argues very persuasively against this result but notes that it is 'the interpretation which the High Court has chosen'. He then proceeds to look into the future and foresees that the decision 'can be expected to exert an enormous influence on the future of Federal Government in Australia'. In fact of course *State of South Australia v. The Commonwealth* was overruled by the High Court in 1957 in *State of Victoria v. The Commonwealth*.²

This is not a case of simple oversight because, in a mysterious footnote on page 106, there is a terse reference to *Victoria v. The Commonwealth*. Wheare has simply not bothered to rewrite his text in the light of that decision. It is true that that decision robs his text of the point of one of the most stirring arguments in the book. However, one would have thought that some much more interesting and fresh material could have been written around Sir Owen Dixon's sceptical remarks in *Victoria v. The Commonwealth* relating to the practical importance of that decision on the uniform tax system.

It would be unfair to criticize this book for the detailed errors it contains on Australian constitutional law because it is written for students of government and not lawyers. Yet one must note the various mistakes made in connection with the *Engineer's Case*³ (page 97 and 122), the defence power (pages 196-197) and trade and commerce (pages 134-141 *passim*). These mistakes however lead one to suspect whether similar mistakes are made in connection with the law of other federal systems. If this is the case then the value of the book even for students of government may be doubted. Wheare is continually using legal examples to demonstrate the problems he is discussing. If the examples are incorrect then they cast that much doubt on the analysis being presented. Where federalism is concerned a political scientist cannot excuse his errors of law by stating that he is not concerned to write for lawyers because, as Dicey remarked, federalism is government by litigation just as much as it is government by legislation.

The bibliography of Australian material on federal government on pages 252-253 is inaccurate and misleading despite its description as a 'select' bibliography. One can only wonder at the criteria used in the selection. A reference is given to the second edition of *Wynes*⁴ published in 1956 whereas the current edition is the third edition of 1962. Professor Sawyer's two volumes on *Australian Federal Politics and Law* are remarkably absent. No reference is given to the Report of the Joint Committee on Constitutional Review which was published in 1959.

In conclusion it is interesting to speculate on how many times since the publication date of this book the bulky body of Sir George Reid has turned in his grave at Wheare's description of the 'industrial and agricultural protectionism' (page 121) of New South Wales at the end of the nineteenth century!

CLIFFORD L. PANNAM*

¹ (1942) 65 C.L.R. 373.

² (1957) 99 C.L.R. 575.

³ *Amalgamated Society of Engineers v. Adelaide Steamship Co. Ltd* (1920) 28 C.L.R. 129.

⁴ *Legislative, Executive and Judicial Powers in Australia* (3rd ed. 1962).

LL.B. (Hons) (Melb.), LL.M. (Illinois); Barrister and Solicitor; Senior Lecturer in Law in the University of Melbourne.