PIONEERS IN CRIMINOLOGY, edited by Hermann Mannheim

London: Stevens and Sons, 1960, Pp. i-xi, 1-402. £3 (Australian).

"Pioneers in Criminology" is the first volume in a new series of criminological publications under the auspices of The Institute for the Study and Treatment of Delinquency. The series is to be called "The Library of Criminology", and Dr. Hermann Mannheim is to be its General Editor. If the series maintains the quality of this first volume, its significance for the rational and more effective treatment of crime will be very great.

In "Pioneers in Criminology", seventeen of the world's currently prominent criminologists write about seventeen of their great predecessors who laid the foundations of criminological theory. The authors and their subjects are diverse in training and experience for the field of criminology is far from confined to those trained in only one discipline. Eight of the "pioneers" were lawyers—Beccaria, Bentham, Ferri, Garofalo, Montero, Tarde, Gross & Doe; five belonged to the medical profession—Ray, Maudsley, Lombroso, Goring and Aschaffenburg; two were sociologists—Durkheim and Bonger; one an architect —Haviland; and one, the only one whose contribution was made in Australia, Maconochie, was a naval captain and geographer, whose life, work and ideas are most succinctly and vividly described by Sir John Barry of the Supreme Court of Victoria.

"Pioneers in Criminology" is introduced by a lengthy essay by Dr. Mannheim in which he surveys the whole terrain of criminology and discusses the formation and relationships between the Classical, Positivist and Social Defence schools of criminology. This essay is a very model of mature scholarship, and shows most clearly the immediate practical importance of some understanding of the basic theoretical problems of criminology. Too often the common lawyer, both before and after judicial appointment, reveals an ignorance barely concealing contempt for the whole area of human endeavour described in this book; too often it is thought that a firm, realistic, no-nonsense, disciplined approach to men and affairs can provide a sufficient guide to the practitioner and judge seeking to understand or to deal with some aspect of the complicated social epiphenomenon of crime. This attitude, though pervasive, renders little service to the community; it is one thing, ostrich-like, to plant one's head in the sand to avoid seeing an impending problem, it is even worse loudly to proclaim the gravity of the social problem of criminality while unthinkingly rejecting the possibility of guidance from the accumulated wisdom of the work and ideas of others.

The pioneers and their theories are simply and clearly presented, any encumbering tangle of pseudo-scientific terminology is largely avoided, and the life stories narrated are of considerable human interest.

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INTRODUCTION TO JURISPRUDENCE, by Dennis Lloyd

London: Stevens and Sons Ltd., 1959, Pp. i-xxiii, 1-482. £3/3/- (Australian).

It is quite impossible to produce any sort of text for a law school course in jurisprudence that will satisfy anyone other than the author, because no teacher will agree with another on the subject's scope or content. However, there are certain modern jurisprudential issues which are debated, and one might reasonably expect any work on jurisprudence to take them into account. Against this yardstick Professor Lloyd's book disappoints. It sets out to do very much what this reviewer attempts in a jurisprudence course, namely, offer a perspective of the debate between the schools, wherever possible by reference to the original texts, but it under-emphasises the impact the linguistic analysis and altogether ignores many of the topics that are traditionally, and rightly, reserved for a jurisprudence course, such as the analysis of rights and duties, possession and juristic personality, and also a great deal of post-Pound sociological jurisprudence. These omissions limit its usefulness, although it is still the most acceptable collection of texts available for a non-American law school.

That any work of this nature can omit Professor Hart's L.Q.R. articles and the Hart-Fuller debate (except in one sentence) is surprising, and it is even more surprising since Professor Lloyd has chosen to make reference to Wittgenstein and to include an extract from Ryle, and another from Glanville Williams on the controversy concerning whether international law is "law". The latter article can only be fully evaluated when read in a Hart context, while the particular extract from Ryle is of limited significance unless followed by application of linguistic techniques to the practical issues raised by corporate personality, possession and similar juristic conundrums. And surely Hohfeld is not all that passé that he can be ignored altogether. Even as an Aunt Sally for Hartian assaults he still has a very useful role to play.

In addition to these major omissions there are, inevitably, minor omissions over which any reviewer might quibble. Perhaps we could have had an extract from Stone's first chapter of The Province and Function of Law; we might have had more on the jurisprudence of interests; and certainly we could have had much more on the statistical and psychological aspects of sociological jurisprudence. The fact of the matter is that this sort of reading guide for jurisprudence cannot be satisfactory when forced within the confines of 482 pages. We need a book the size of Hall's, but with a selection more suited to the needs of the 1960's and of our law schools. Perhaps Professor Lloyd's publishers can be persuaded that the extra costs involved in doubling the size of the book will make it much more useful to Australian law schools. I do not speak for English.

It is pleasant to notice that Professor Lloyd is concerned to give a proper perspective to natural law theories, which are usually hopelessly mis-stated in works of this sort, but it is doubtful if the vital philosophical differences between the Aristotelian and the rationalist traditions really come out. The unembarrassed transition chrono-

logically from Aquinas to Locke to Kant to Duguit (of all people!) to Gény, to Stammler, to del Vecchio, to Maritain and Dabin, with Northrop added apparently as a corrective, can only mislead. What a wierd collection of bedfellows, deriving their views from metaphysics, the social contract and syndicalism, with traces of Hegel and Bergson, and implications for liberalism and totalitarianism. Are two sentences on Hume and Rousseau sufficient to bridge the enormous gap between Aquinas and Kant? Can the Aristotelian tradition possibly receive adequate attention without reference to Suarez? Until Professor Lloyd expands his commentaries sufficiently to take these things into account his work will not displace Friedmann's Legal Theory, which in some respects duplicates. But as a collection of texts it is clearly on the right lines and therefore welcome. It is just the thing on sovereignty, realism, and pure theory and the historical school. And it is good on the judicial process, though Professor Lloyd has little excuse for introducing this hobby-horse of his when he omits most of what belongs to analytical jurisprudence. At the risk of doubling the price to students it is to be hoped that eventually the book will double its size and that the reader will get sufficient to give him an adequate insight into the philosophical issues at play in modern thinking about the law.

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THE GOVERNMENT OF THE AUSTRALIAN STATES,

Edited by S. R. Davis.

Melbourne, 1960: Longmans. Pp. i-xi, 1-746.

£3/10/- (Australian).

For the past 60 years discussions on the Australian Constitution have dominated the work of Australian constitutionalists. The constitutional status of the Australian States and their constitutional problems have been largely neglected by legal commentators. Unfortunately, from the point of view of public law, this volume does little to fill this gap. Only two of the eleven contributors have had legal training and generally the book touches only incidentally upon strictly legal constitutional problems. As a political science text dealing with government and politics in the Australian States the volume is well-written, generally objective and most informative, and deserves a wide audience amongst those who are interested in Australian politics.

From the strictly legal point of view the first chapter of this book, "The Constitutional Framework", is the most rewarding. Here in 53 pages Professor H. R. Anderson, the Professor of Public Law in the University of Queensland, gives a concise and most readable account of the Constitutional structure of the Australian States and a basic outline of the Commonwealth Constitution. Essentially, however, Professor Anderson is writing for the non-lawyer. The section on

the States could well serve as an introduction to State constitutional problems in those parts of Australia where State constitutional law has been virtually ignored for many years now, but it must be emphasised that Professor Anderson quite rightly does not attempt to explore any legal problem in depth because of the general nature of this work. The second part of this chapter on the Commonwealth Constitution is no more than a brief "bird's-eye view", which brings the Constitution down to lay terms with great clarity and demonstrates Professor Anderson's own deep understanding of Federal Constitutional problems which enables him to write for a non-legal audience so adequately. Although this chapter is not of great use to the Australian lawyer, it could prove to be of considerable value to any legal scholar outside Australia who seeks a brief and accurate description of Australia's basic constitutional framework, particularly with reference to the States, on which too little has been written.

The remainder of this book is primarily concerned with the politics and government of the States. Specialist contributors from each State deal in considerable detail with political trends, the work of the State Parliaments, electoral questions and the organisation of the Executive branch of government in the States. The Chapter on the Government of South Australia, which was jointly prepared by Dr. R. L. Reid, Mr. L. C. L. Blair and Mr. K. A. F. Sainsbury, is much more than a mere chronicle of government and politics in this State. It is one of the best contributions to this volume. Although opinion is freely laced in their commentary, the authors show a keen appreciation of the political climate in this State, particularly in the last 25 years, and their opinions are balanced, and generally objective. The judgments of the authors on the influence of the press, and the effect of South Australia's electoral organisation on the electoral prospects of the two main political parties, for example, avoid the hollow catchcries which are often uttered on these questions and have an air of authenticity which is often lacking when such matters are discussed. The concluding part of this work mainly consists of a lengthy chapter by the Editor, Dr. S. R. Davis, entitled "Diversity in Unity" which critically sums up the general trends evinced in the main body of the book on State government and politics.

As Professor Anderson points out at the beginning of his chapter in the book: "Politics nourishes the legal cells of the body of government". For any constitutionalist who wants a complete picture of the way in which the politics and governmental organisation of the States nourishes the legal framework of our State Constitutions this volume should prove to be a necessary acquisition. At the same time it is to be hoped that in the not too distant future the "legal cells" of the body of State government may receive more attention in a companion volume to this work, to overcome the widespread neglect of State Constitutional law in this country.

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ENGLISH COURTS OF LAW, by H. G. Hanbury

Melbourne: Oxford University Press, 3rd edition, 1960. Pp. 1-185. 12/9 (Australian).

ELEMENTS OF ENGLISH LAW, by W. M. Geldart, revised by Sir William Holdsworth and H. G. Hanbury, 6th edition by H. G. Hanbury.

Melbourne: Oxford University Press, 1959. Pp. i-x, 1-208. 11/3 (Australian).

These two editions of standard texts on the elements of the English legal system have been competently done and bring the books satisfactorily up to date.

It is, however, to be regretted that Professor Hanbury in his "English Courts of Law" tends to perpetuate the good-natured insularity and self-congratulation universally regarded as the hallmark of the English, as opposed to English-speaking, lawyer. Nothing illustrates this better than the embarrassing conclusion on p. 185 that the English Legal system is "the cynosure of the admiring eyes of the civilized world". On p. 80, instead of questioning the wisdom of an appeal system whereby three elderly law lords can overrule two of their brethren, a unanimous Court of Appeal, and the trial judge, the author merely puts forward the untenable explanation that the triumphant minority are the ablest lawyers in the land. On p. 130 Maitland's myth of the foreign lawyer who cannot understand the trust is reproduced; yet we must all have met European lawyers who appeared in conversation to have no difficulty in grasping the trust concept and its implications. The suggestion on p. 144 that Englishmen are the only people who cheerfully undertake unpaid public work is wholly without foundation. The account of King John and the barons on. pp. 48-49 is too black and white, and the attribution of Shakespearian rhetoric to John of Gaunt scarcely helps the argument along.

It should also be made clear on p. 8 that the man who watches the baby drown will be in trouble if he happens to be in charge of the baby. A reference to *Russell* [1933] V.L.R. 59, might help here. On p. 13, 10 lines from the bottom, the word "civil" is in the wrong place. The tacking on of *Fowler* v. *Lanning* on p. 163 is useless as it stands. The balancing on pp. 179-180 of the decision in *Liversidge* v. *Anderson* against the intercepted letter to the court shows a lack of proportion. One does not have to be an "extreme individualist" to deplore *Liversidge* v. *Anderson* and to regard the House of Lords as a less stalwart guardian of liberty than Professor Hanbury would have us believe. One wonders what is his opinion of *D.P.P.* v. *Smith* [1960] 3 W.L.R. 546. The account on pp. 184-185 of the steps to be taken by an intending barrister very properly puts dinners first and examinations second, an accurate reflection of the true position; but it might have been mentioned earlier that the education of solicitors is about to undergo sweeping changes.

It is no disparagement of "Elements of English Law" to remark that in the reviewer's opinion the best of all such books was the late

Stanley Rubinstein's "John Citizen and the Law" in the Pelican series. The present volume is an admirably concise account of the ground covered, but the selection of that ground is not altogether satisfactory. The chapter on probate, divorce, and admiralty is a singularly unhappy adoption of historical accident. The following miscellany headed "Persons and Personal Relations" consists largely of matters which, with divorce, would be better treated as family law. The reviewer finds it doubtful whether the highly compressed account of the doctrine of estates in chapter V is intelligible to untrained readers; and the remainder of the law certainly cannot be satisfactorily subsumed under the heads of contract, tort and crime.

Both volumes, it is thought, are of considerably more utility in England than in Australia.

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FUNDAMENTAL LAW IN CRIMINAL PROSECUTIONS, edited by A. L. Harding.

Dallas, Texas, Southern Methodist University Press, 1959, Pp. i-ix, 1-28. $3.00.

The Due Process clause of the Fourteenth Amendment to the Constitution of the United States of America has provided the machinery for Federal courts to exercise some control not only over the investigation, detection, trial and punishment of federal offences, but also over those same law enforcement processes in relation to offences defined by State Legislatures or investigated or prosecuted by State officers. In the book under review, four aspects of these problems of constitutional and criminal law are discussed—the relationship between state and nation in matters of lawless law enforcement; the right to counsel; compulsory self-incrimination; and the right to privacy. These are excellent essays for the Australian lawyer interested to compare the protection of certain fundamental human rights in a federal system, using constitutional guarantees to achieve their protection, with our own conventional common law and, in some cases, statutory methods for achieving what are, in fact, better results. If, from the fewer and less gross infringements of such rights occurring in Australia he concludes that constitutional guarantees are ineffective, he may be erring egregiously. The social circumstances are so different that the conclusion certainly does not follow. And, in that our society seems in many ways to be emulating that of the United States, it may well be that the lack of fundamental constitutional guarantees may come to be felt in this country.

The four essays are succinct and easy to read. The book is well presented and can be recommended to anyone interested in comparative criminal law and procedure.

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THE FEDERAL STATES AND THEIR JUDICIARY, by W. J. Wagner.

Hague: Mouton and Co., 1959. Pp. 3-390. $8.50.

This is a beautifully produced book which does credit to Mouton and Co. It is also the product of obviously tedious and devoted research on the part of Professor Wagner. It aims to describe comparatively the judicial process in federal States, of which seven, the U.S.A., Switzerland, Australia, Canada, Argentina, Brazil and Mexico, are selected for particular discussion. Since it is unlikely that the average Argentinian lawyer knows any more about the Australian system than the average Australian lawyer knows of the Argentinian, it would be unfair to say that little of original worth is to be discussed in the actual Surveys which Professor Wagner has undertaken. He does not aim to add to our knowledge but rather to make it more widely available, and if, as is the case, this reviewer finds the sections on Latin-America informative it is probable that others will find the Australian sections equally so.

When this is said, however, there remains the question whether such a work has any object other than to make readily available the bare facts about the judiciary and its jurisdictional role in various federal societies. Professor Wagner no doubt believes it has because the burden of his emphasis is on the importance of federal supremacy as against "state rights", and on the role of the judiciary as the architect of this supremacy. In this he is no doubt universallising his views on the situation in the United States. So far as the Australian lawyer is concerned he may be disappointed if he expects anything more than the most obvious facts, which in any event merit only a half-dozen pages. The discussion on the *inter se* question is the most extensive devoted to Australia in which the *Banking* Case gets a mention without further analysis of the conundrums which it and its successors have presented. This unshadowed treatment is no doubt inevitable in a book which tries to cover so much. Likewise *Alexander's* Case appears in a section on the provisions of the Judiciary Act, but since it is not judicial power as such that is under discussion the author omits the *Boilermakers'* Case. The book, is short, is descriptive rather than analytical. However, it is well documented and for a comparative survey may prove a useful lead into other systems.

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THE PROGRESS OF INTERNATIONAL LAW, by R. Y. Jennings.

Cambridge: At the University Press, 1960. Pp. 1-49. £0/3/- (Australian).

The holders of the Whewell Chair have always been distinguished by their ability to write good prose. Professor Jennings is an acceptable successor in this respect; indeed we might almost say that his inaugural lecture is one of the most elegantly composed essays in

international law to appear in recent years. It makes a number of telling points, particularly in its contrasting of the topics taught by the first Whewell Professor, Harcourt, with those taught today, with a decided shift in emphasis from a law guaranteeing the sovereign whim of the State to a law guaranteeing the harmonious co-existence of peoples. This is not a new vision but rather a return to the old which prevailed before the individualism of the 18th century distorted the picture. Professor Jennings points out that while the customary law is becoming ever more particularised by the judicial process it is being supplemented by highly technical specialist topics founded on the framework of treaty. Among these are rivers, air law, with its complicated features of commercial and non-commercial privilege, rates, frequencies, etc., and currency and economic arrangements. The beauty of a little essay is that it puts the whole field in perspective, which is what the lawyer who is immersed in technicalities, from time to time finds beneficial.

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THE MACHINERY OF JUSTICE IN ENGLAND (Third Edition), by R. M. Jackson, LL.D.

Cambridge: 1960. Cambridge University Press, Pp. i-xi, 1-417. £2/5/- (Sterling).

For twenty years this book has stood out as the most readable and detailed account of the administration of justice in England. This third edition not only brings this work up to date, if anything it enhances its reputation as a modern classic of the law. Dr. Jackson skilfully blends a scholarly approach to his subject with his wide knowledge of the day to day working of the English legal system. In marked contrast to other books which deal with this subject, the author never sets out to give the reader a mere catalogue of the organisation of the courts, special tribunals and the legal profession in England. With refreshing candour and vigour, which unfortunately is often lacking in a book of this nature, the "pillars of English law" are subjected to close critical scrutiny and analysis. At the same time, however, Dr. Jackson never criticises indiscriminately, as befits a scholar of his stature. As a result, his temperate candid criticisms of certain present day features of the English legal system and his constructive suggestions for reform cannot be ignored, even if they might not be acceptable in all quarters.

The first three chapters of the book deal with the history and present day organisation of the courts. Dr. Jackson does not labour the history of the English court system but his first chapter entitled "Historical Introduction" covers in a tight synthesis of 18 pages what has usually taken legal authors many more pages to do much less adequately. In the following two chapters he deals with Civil Jurisdiction and Criminal Jurisdiction. No stone is left unturned to give a detailed picture of the workings of the Court system. Arbitration, which is so often ignored, finds its rightful place in the discussion on Civil Jurisdiction. It is interesting to note that in this

section the author points to the fact, which generally is not appreciated outside England, that under England's compulsory automobile insurance legislation most personal injury claims are subjected to arbitration. This results in an even smaller percentage of these cases reaching the courts than in Australia, and emphasises the importance of arbitration in the English civil jurisdiction.

In this edition a new section has been added on the workings of the Restrictive Practices Court. As the author points out the creation of this court in 1956 marked a complete change in national policy. For a hundred years in England the general trend in the administration of justice was to move away from courts with specialised jurisdiction in favour of Courts of general jurisdiction. The setting up of the Restrictive Practices Court has reversed this tradition. With Australian legislators now contemplating the introduction of new Restrictive Trade Practices laws it will be interesting to see if this country, too, follows England's lead in reversing the trend of the last one hundred years and sets up a special Restrictive Practices tribunal if similar laws were placed on our statute books.

Dr. Jackson's comments on the training of the legal profession, which are contained in Chapter IV on "The Personnel of the Law" and in his final chapter on "The Outlook for Reform" are of especial interest to Australia. Although unfortunately he does not refer to the Australian experience, the author makes it abundantly clear that he would favour a system of legal education in England very much like our own. He has two major concerns with the present system of legal education in England. On the one hand members of the English Bar do not necessarily have an adequate period of learning on the job before being admitted to practise. On the other hand, because of the strict division in the English legal profession, most young barristers have several very lean years on admission to the Bar and this has led to a serious decline in the active strength of the Bar. Dr. Jackson suggests that all members of the English profession should have a common training, with an academic part and a period of learning on the job. Then, as he points out, "Some people with that general training might well become specialists, and so maintain the bar as a separate body if that is thought important, but they would specialise after acquiring a basis of general practice".

The latter chapters of this volume are devoted to the "Cost of the Law", "Special Tribunals" and finally "The Outlook for Reform". Each chapter is an excellent critical essay dealing with these topics. The section of "Special Tribunals" again demonstrates Dr. Jackson's thoroughness in dealing with his subject matter. Royal Commissions, for example, which are often dealt with in a few lines, if at all, are adequately treated and fitted into their place in the legal order.

One of the great virtues of this book is that it can be read by the lawyer, law student and the interested layman alike. It is not heavily burdened with footnotes and cases references, but at no stage does the work lack the stamp of authenticity and scholarship. The temperate constructive criticism which the author makes of the English legal system deserves a wide audience.

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