been regulated by statute, the Court was completely at liberty to lay down the rules in this field. The rules do not constitute a coherent system of integrated principles. Though the treatment of foreign law as "fact" and not as "law" may have some practical significance, it is no more tenable because of its fictitious approach to an international legal reality. This is a consideration which deserves the attention of private international lawyers in other countries where foreign law is also treated as fact and not as law.

The author draws attention to the fact that the French Cour de Cassation may quash a decision of a lower court (from which an appeal is brought) on the ground that the foreign law which happens to be the proper law according to French conflict rules has not been applied by the court. On the other hand the Cour de Cassation would refuse to engage in any revision of the correctness of interpretation of a foreign law actually applied by a lower court. The author concludes that if the interpretation of foreign law is treated as a question of fact, the question of application or non-application of a foreign law as the proper law in a particular case must also be considered a question of fact. But actually it is not; thus the solution adopted by the Cour de Cassation is not logically defensible. The author enumerates several reasons why the Court remained reluctant to intervene in the interpretation of foreign law. There is first the general attitude of the judiciary which shrinks from interfering with any codified law. There are also political reasons for not dealing with it as law. Further, interpretation of a principle of foreign law would be limited to a particular case, whereas the task of the Cour de Cassation is to explain the law only for the purpose of general interpretation. The confusion of law and fact in the application of foreign law is another reason for not interfering with it. The Cour de Cassation seems also reluctant to deal with foreign law as this could mean the participation in the process of law making in another country. Finally, interpreting foreign law would increase the volume of work which is already menacingly large. The author suggests that the Court (which admitted certain exceptions to the rule of non-interpretation of foreign law) should go further and admit more exceptions and possibly modify the rule. The French Law Reform Commission has done nothing to improve the situation. Quite to the contrary; article 56 of the Draft of the Commission states that the interpretation of foreign law cannot result in the annulment of a decision of a lower court, a conclusion considered by the author as most unwelcome.

This is a book of primary importance for all countries within the European Common Market which tend to adjust their legal systems to the requirements of European unity. But Professor Zajtay is not only the spokesman of regional legal interests; he is a pioneer in the field of private international law whose works should be read with great care in legal circles all over the world. The reviewer expresses the hope that an English translation will be made available to students of comparative law in England, the Commonwealth countries and the United States.

CHARLES HENRY ALEXANDROWICZ.*

Mental Abnormality and Criminal Responsibility — A Plea for Justice, A Report of a Special Committee of the Victorian Central Executive of the Australian Labor Party. Melbourne, 1965. 55 pp. (50c. in Australia).

In the light of modern medical knowledge concerning mental disease and the functioning of the human mind, few would now question the need

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to modify or replace the present test of criminal responsibility laid down in the M'Naghten Rules. The problem remains, however, of reaching agreement upon the form such modification should take or, if the M'Naghten Rules are to be abrogated, the test which should replace them.

Into an area fraught with difficulties and already widely canvassed in many common law jurisdictions has bravely stepped a Special Committee of the Victorian Central Executive of the Australian Labor Party. Drawing courage from the words of the late Mr. Justice Frankfurter who said, when giving evidence to the English Royal Commission on Capital Punishment, "that we ought not to rest content with the difficulty of finding an improvement to the M'Naghten Rules" (Report of the Royal Commission on Capital Punishment, p. 102), the Committee has investigated and made recommendations for the reform of the law as to insanity in relation to criminal responsibility in Victoria.

The Committee received evidence from a number of experts identified only as a professor of law, a government psychiatrist, a private psychiatrist, a criminologist, a crown prosecutor and a defence counsel. From those extracts reproduced in the Report it would appear that this evidence was of a high quality. Relying largely upon the evidence of these experts, and upon material drawn from the English Royal Commission on Capital Punishment, the Committee has set out in terms designed to be intelligible to the general public the state of the criminal law and practice regarding insanity in Victoria.

As the Committee so rightly emphasises, a dreadful shadow is thrown over the whole problem of the quest for a more satisfactory test of insanity by the retention in Victoria of the death penalty for murder. Statistical evidence appears to indicate that in those jurisdictions in which capital punishment for murder is retained, the defence of insanity is more frequently raised by accused persons and more frequently accepted by juries than in those jurisdictions in which the death penalty has been abolished. To avoid the possible infliction of the death penalty, juries may accept the defence of insanity when it is really quite artificial to attempt to bring the facts within the M'Naghten Rules. The psychiatrists and counsel who gave evidence to the Committee were fairly unanimous in their opinions that juries generally were guided by broad common-sense considerations far removed from the niceties of the M'Naghten Rules. In cases of particularly "bad crimes" likely to be repeated by the accused, juries were said to be very reluctant to allow a defence of insanity to succeed, no matter how strong the medical evidence was. On the other hand, in particularly tragic cases such as those in which people in a state of extreme melancholia kill a spouse or child, juries were said to be ready to accept a defence of insanity on somewhat slight evidence.

The Committee considered several possible alternative tests of criminal responsibility to the M'Naghten Rules. It rejected those of diminished responsibility, introduced as a compromise in England by the Homicide Act of 1957 following the rejection of the views of the majority of members of the Royal Commission on Capital Punishment; the so-called rule in Durham's Case adopted in 1954 in the District of Columbia and in certain other jurisdictions; and the proposed test contained in the United States Model Penal Code. Finding problems or defects with each of these alternative tests the Committee finally recommended the adoption in Victoria of the test favoured by the majority of the members of the Royal Commission on Capital Punishment, namely, that it should be left to the jury in each case to determine whether at the time of the act the accused was suffering from disease of the mind (or mental deficiency) to such a degree that he ought not to be held responsible.

In the Committee's opinion such a test, which is wide enough to encompass cases regarded at present as instances of irresistible impulse and automatism,

would free the common law of the fetters imposed on it since 1843 and restore to the common law its capacity for development and flexibility of operation. The Committee also recommended that whether this new test is introduced or not, it should be provided that the Crown carry the burden, once the issue of insanity is raised, of satisfying the jury beyond reasonable doubt that the accused was sane at the time of committing the act.

A strange omission in the Committee's Report is any discussion of the reasons for the rejection both by the government of the day and by members of the judiciary in England of the test proposed by the majority of the Royal Commission members. A major criticism of this test and one which probably led to its rejection, is that it is too vague. It leaves to the judge in each case in which insanity is raised the exacting task of interpreting and directing the jury on the standards they should apply in determining whether the accused should be held responsible for his actions. As Glanville Williams has pointed out, there is also the danger that the test would encourage a reactionary jury to ignore medical evidence of insanity on the ground that although the accused is undoubtedly insane, he ought to be held responsible.

The M'Naghten Rules form the basis of the test of criminal responsibility when insanity is raised as a defence not only in Victoria but in all other States of the Commonwealth. For this reason the Report of the Committee merits close attention in all Australian jurisdictions. It is perhaps a measure of both governmental and legal apathy not only in Victoria but in other States that an investigation and recommendation for the reform of such an important area of the criminal law as that relating to insanity should have to be undertaken by a Committee set up by a political party in opposition. This comment must in no way be taken as detracting from the quality or the value of this Committee's work. The excellent Report which it has produced may perhaps lead to a nationwide review of the criminal law relating to insanity, a review which is long overdue.

DUNCAN CHAPPELL.*

The Constitutions of the Australian States, by R. D. Lumb, Senior Lecturer in Law in the University of Queensland, Brisbane, University of Queensland Press, (2 ed.) 1965, ($3.50 in Australia).

The first edition of this book was reviewed in this journal in 1964[1] and I would endorse the views expressed on that occasion by Professor Whitmore. It was a valuable introductory study of an important aspect of Australian constitutional law which is too often overshadowed by the much greater emphasis placed on the Federal aspect. However, the worthwhile goal of brevity had been achieved at the cost, in some problem areas, of treatment verging on the superficial.

Previously there had been no up-to-date book in this field at all. Students and their teachers had to consult a multiplicity of sources. The value of Dr. Lumb's achievement was that he brought the principal references into one volume which was also brief enough to be easily accessible to students. Having charted the course, however, he exposed himself to perhaps unwarranted criticism for not having done much more, for the very brevity of his book highlights the need for a fully comprehensive treatment of the subject.

However, one could still wish that Dr. Lumb had given fuller treatment to some of his topics. Now, in this second edition he has, in fact, expanded certain sections of the book to meet such objections.

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[1] (1964) 4 *Sydney L.R.* No. 3 484.