Paradoxes In Prison Sentences, by A. R. N. Cross, Oxford University Press, 1965. 26 pp. (60c. in Australia.)

When Rupert Cross took the B.C.L. examination some thirty years ago, he was asked if theft is committed by someone who, after lunching at a restaurant, removes the tip left by another customer for the waitress from under that customer's plate and places it under his own plate as a tip for the same waitress. In Australia in 1962 Professor Zelma Cowan asked him ironically whether they were still talking about the problem of the tip at Oxford. He was obliged to admit that it recurred regularly in moots, tutorials and examinations.

Recalling these incidents in his Inaugural Lecture as Vinerian Professor, Cross says categorically that "the study of the criminal law must be broadened so that argumentation about cases like that of the transferred tip shall become as obsolete as the controversy about the number of angels who could balance on the point of a pin". Certainly students will still have to learn the definition of theft. But their attention must also be drawn to such problems as what causes theft in an affluent society and how thieves should be dealt with when caught. If their teachers fail to interest them in these matters "they will be wholly failing to meet the challenge of contemporary legal developments".

It is one thing to enunciate precepts; quite another to put them into practice. Professor Cross, remarkably, does both. For he goes on to discuss the complex problem of sentencing with particular reference to the confused topic of the principles on which courts act in fixing prison sentences. As if this were not enough innovation, the discussion itself takes an unusual form. Instead of tracing the familiar academic arabesques, concrete examples such as that of the great train robbery are considered. In this way the irrelevance to actual cases of the customary conjuring act with abstractions like Retribution, Deterrence and Reform is demonstrated rather than merely declared.

Professor Cross betrays some uncertainty as to what inaugural lectures ought to be like. "I don't know whether (they) are meant to contain messages". His admirers will be pleased, if not greatly surprised, to find that he resolved the problem by ignoring it. Unburdened by any awful sense of occasion he speaks in his own voice. *Ad multos annos.*

GORDON HAWKINS*

Zur Stellung des Ausländischen Rechts im Französischen Internationalen Privatrecht, by Imre Zajtay, 1965. Walter de Gruyter, Berlin and Mohr-Siebeck, Tübingen. 219 pp. DM. 30.

The author of this work is Professor of Law at the University of Mainz and Maitre de Recherches at the Centre National de la Recherche Scientifique in Paris. The book deals with the position of foreign law in French private international law. It is a new and revised edition of a monograph first published in French in 1958. In this new edition Professor Zajtay discusses a number of issues not considered in the earlier edition, notably the application of foreign law *ex officio* and the revision by the Court of Cassation of the factual judicial interpretation (*tatrichterliche Auslegung*) of foreign law.

Professor Zajtay's main contention is that the treatment by the courts of foreign law as "fact" and not "law" is not a viable proposition. He examines the reasons why the French Supreme Court (Cour de Cassation) adopted the concept and why it still clings to it. He emphasises that since the problem of the position of foreign law in French private international law has not

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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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