FEDERAL JURISDICTION IN AUSTRALIA by Zelman Cowen

Melbourne: Oxford University Press; 1959. Pp. i-xv, 1-212. £2 (Australian).

Professor Cowen, Professor of Public Law and Dean of the Faculty of Law at the University of Melbourne, has placed all students of Constitutional law in his debt by this book. He deals with all federal jurisdiction except the appellate jurisdiction of the High Court (if that be deemed in itself federal as distinct from the jurisdiction exercised by the Court from which the appeal was brought). It is divided into five parts which deal in turn with the general nature of the original jurisdiction, the diversity jurisdiction, the nature of the Federal Courts, the courts of the Territories and the investing of State Courts with federal jurisdiction.

In the first part the difficulties arising from unintelligent copying are well stated but the writer does not always make allowance for the States of the 1890s as compared with the Australia of the 1960s in dealing with the drafting. Thus for example the grant of "admiralty and maritime" jurisdiction was perfectly explicit to any one in that decade; there are many matters relating to shipping, smuggling, the criminal law and fishing which are not technically "admiralty" and which were not within the grant of power in Colonial Courts of Admiralty Act 1890. Today with the advent of air transport they are becoming of ever decreasing importance but the Founding Fathers no doubt remembered that wrongful claims to exercise admiralty jurisdiction helped to bring about the Boston Tea Party and drew their provision accordingly.

Matters under Section 76 iv should include claims by two Supreme Courts under the wide Order *XI* provisions over the same causes of action which exist in the various State Rules of Court. This problem was presented to O'Bryan J. in *K. W. Thomas (Melbourne) Pty. Ltd.* v. *Groves*, 1958 A.L.R. 499 but His Honour, wisely no doubt, did not enter that difficult terrain although it seems difficult to see how he found for the plaintiff without deciding it.

Another interesting problem alluded to but not dealt with is the power to remit for trial under Section 45. If such a power is exercised, does the State Court have, for example, the discretion of the High Court to sit with a jury?

In dealing with State Courts invested with bankruptcy jurisdiction one matter not considered is how far their pre-existing insolvency jurisdiction can still govern their practice. A typical problem is in the case of vesting orders after disclaimer. If the Federal Bankruptcy Act is defective not in conferring the right but in the method of effecting a vesting as appears to be the case, can the State Court use its existing adjective law to solve the difficulty?

These and many other interesting problems come to mind as one reads the book. All constitutional lawyers will thank Professor Cowen for stimulating thought and research in this difficult area of constitutional law.

H. E. ZELLING*

* LL.B. (Adel.). Of the South Australian Bar.

CRIMINAL LAW, by Rollin M. Perkins

Brooklyn, N.Y.: The Foundation Press Inc., 1957.
Pp. i-xxvii, 1-999.

This is a first-class text on a field of law which stands in need of the attention of the scholarly commentator. It has no serious American competitor and, in my view, it is a superior work to such texts as Kenny, Cross and Jones, Russell and Archbold. Its concentration on the law and practice in the numerous jurisdictions in the United States of America makes it, of course, of much less day to day value in Australia than the English texts; but for any practitioner who is anxious to perceive the wider implications of the rules of criminal law and to know something of their development in the active though sometimes ornate jurisdictions across the Pacific, Perkins can be most confidently recommended. It is a book of 926 pages of text with an ample and excellent index. As a means of quickly discovering the leading United States authority on any point of criminal law it could hardly be bettered.

I confess (which does not come easily to a reviewer) that I have not read the book. It is not the sort of book that one sits down to read through. It is rather the book that one places close to one's hand for ready and repeated consultation. In the few weeks that this book has been on my desk I have found it extremely useful. Let me give two examples.

The question arose in the Northern Territory some time ago whether a person could properly be convicted of perjury who, having given sworn evidence on a Friday, thought about the matter while the court was adjourned over the week-end and on the Monday morning expressly withdrew the previous evidence and confessed that he was wilfully lying on the Friday. There is little English or Australian authority on this point. The case was decided on the broad principle that the court's interest in truth was the paramount interest to be served and that recantation in these circumstances should not therefore lead to a conviction of perjury. When, in correspondence, this question was raised with me I referred to the index to Perkins, found a precise sub-heading "retraction", and was guided to half a page of detailed analysis of the problem with references to ten cases in which it had arisen in the United States. There followed a careful statement of the reasons which had led the Federal Supreme Court in 1937 to take a contrary view to that later applied in the Northern Territory and to hold that the above argument for acquittal "overlooks the tendency of such a view to encourage false swearing in the belief that if the falsity be not discovered before the end of the hearing it will have its intended effect, but, if discovered, the witness may purge himself of crime by resuming his role as witness and substituting the truth for his previous falsehood. It ignores the fact that the oath administered to the witness calls on him freely to disclose the truth in the first instance and not to put the court and the parties to the disadvantage, hindrance, and delay of ultimately extracting the truth by cross-examination, by extraneous investigation or other collateral means." It is not relevant now to discuss which is the correct view of this matter; what is clear is that the material in Perkins rapidly leads one to the heart of the matter.

Recently in the case of *Howe* the Supreme Court of South Australia, the South Australian Court of Criminal Appeal, and the High Court have considered the criminal liability of one who uses excessive and disproportionate means of self-defence. A certain amount of material from the United States and from Canada was used in the judgments in the Australian courts. Reference to Perkins provided several lines of analysis and a considerable body of case law which had not been considered by the Australian courts, material which would have been useful to them had it been brought to their attention, material which bore directly on the problem they faced.

The book is well presented; its printing and layout clear and unpretentious. The only defect in it that I can see at present is that when the American price of ten dollars is translated by means of a series of freight charges and profit margins into Australian currency, it will not be an inexpensive book.

It would be unrealistic to recommend Perkins on criminal law for practitioners other than those who practise in the criminal courts; but for those who do work in this socially important but professionally neglected jurisdiction it is no exaggeration to say that Perkins is an indispensable text if they are willing to look outside the confines of English and Australian criminal law.

NORVAL MORRIS*

*Ph.D. (Lond.); LL.M. (Melb.); Bonython Professor of Law, University of Adelaide.

CASES ON TRUSTS, by H. A. J. Ford, LL.M. (Melb.), S.J.D. (Harvard).

Australia: Law Book Company of Australasia; 1959. Pp. i-xvi, 1-786 and Index. £4/15/- (Australian).

Australian law schools have, during recent years, become increasingly aware of the advantages of the case-book method of teaching, and the purely didactic method, in which the student was expected to play a merely receptive part and which was practically universal a few years ago, is now seen to have its weaknesses. So thoroughgoing a use of the casebook method as is, it appears, made at Harvard and other United States law schools may not be suitable to conditions in Australia or to all law subjects. Nevertheless, a judicious combination of the case-book method with the didactic method should help the student to grasp legal methods of reasoning and to develop the capacity to apply general principles to particular facts, while not losing the advantage of systematic exposition, which is, no doubt, the strong point of the didactic method.

If one is going to use the case-book method, one obviously requires a case-book. The most useful case-book for any teacher is perhaps the one he prepares himself, but to say that is not in the least to depreciate the value of Dr. Ford's book, which should be of the greatest assistance to teachers and students of equity, whether or not it is supplemented by the individual teacher's own material. Practitioners should also find it both interesting and valuable.

Although Dr. Ford, in his Preface, disclaims any intention of dealing with every aspect of trusts, the cases he has collected refer to most of the major areas of the subject except those where the law is almost purely statutory.

The cases have been selected almost entirely from English, Australian, and New Zealand decisions. In addition, numerous statutory provisions relevant to the subject-matter and a few historical readings, such as extracts from Bacon's Reading on the Statute of Uses, have been included.

The book includes, of course, many of the well-known leading cases, in which established principles are formulated and applied. It also includes many cases, some of them less well-known, which have, evidently been selected not so much to illustrate established principles as to provide materials for discussion and comparison. The selection of cases for this purpose is the more difficult and, it seems to the present reviewer, the more valuable part of the labours of the case-book compiler.

The cases are reproduced more fully than is sometimes done in a collection of cases intended primarily for the use of students. *In re Anning*, for instance, occupies over twenty pages; *In re Diplock*, nearly as many. And, generally, the editor's inclination seems to have been to include judgments in full, or almost in full, and not to neglect dissenting judgments. This, of course, adds to bulk and may, to the student, give the book a more formidable appearance than, say, Nathan's Equity through the Cases, but there can be no doubt that it adds to its value. If the aim had been merely to provide a collection of cases illustrating various principles, more abbreviation might have been permissible, but, where the aim is to provide also materials for discussion and comparison, fullness is essential.

The cases are not provided with head-notes, short or long. The reader is plunged straight into a statement of the facts or, it may be, straight into the judgment. The cases are, of course, grouped under various headings and sub-headings, but, apart from this clue, the reader confronted with a case with which he is unfamiliar can find out what it is about only by reading it through. This may be an advantage; it frustrates the student who otherwise might be tempted to acquire his knowledge of the case by reading the head-note only. It does seem, though, that some brief outline of the effect of a decision might usefully precede a full report.

Dr. Ford has resisted any temptation he may have felt to interlard his material with lengthy editorial discussions. The explanations that are interposed from time to time say no more than is really necessary. Problems are also included here and there. Taken as a whole, Cases on Trusts will constitute a most useful aid to the study of the subject.

B. O. HUNTER*

*LL.B. (Adel.) of the South Australian Bar.

ALEXANDER MACONOCHIE, by Mr. Justice Barry.

Melbourne: Oxford University Press, 1958. Pp. i-xx; 1-277. £2/10/- (Australian).

Mr. Justice Barry has written what is the only full-length, and will be, one conjectures, for a long time to come the definitive, biography of a misunderstood and maligned reformer. Maconochie is usually dismissed in the history books with a patronizing gesture as a hopelessly impractical philanthropist whose attempts to rule transported convicts by misplaced kindness broke down in failure and anarchy. The falsity of this impression is abundantly demonstrated in the book.

Alexander Maconochie (1787-1860) was the son of a Scots lawyer, and the ward of a Scots Judge. Before he left for Van Diemen's Land in 1836 as secretary to the newly-appointed Lieutenant-Governor, Sir John Franklin, he had been midshipman, naval officer, farmer, publicist and secretary to the Royal Geographical Society. It seems to have been an accident that directed his attention to penology. Before he left he was asked by the Society for the Improvement of Prison Discipline to give them a report on certain aspects of the convict system. That report procured his dismissal by Franklin from the secretaryship and also his appointment as superintendent of the penal settlement at Norfolk Island. He held that post for four years (1840-1844). He was not permitted to put his theories into full operation but even so he exceeded the limits prescribed for him and was in consequence recalled. The subsequent mutiny, as the author demonstrates, was due not to his laxity but the severities of his successor. His only subsequent public appointment was as Governor of Birmingham Prison (1849-55) but here too he was dismissed and here too trouble followed his dismissal and in this instance he does not appear to have been blameless. He died poor but undiscouraged still endeavouring to convert the public and the Government to his doctrines.

The author deals judicially with his hero and his hero's theories. It is obvious that Maconochie must have been a maddening subordinate. He seems to have construed each appointment as a licence to apply his system at will, instructions, regulations, common law and statute notwithstanding. Then, too, one is left with the feeling that he was more interested in the enunciation of principle than the supervision of administrative detail and his judgment of men appears to have been defective. The book makes no attempt to disguise this side of his activities. There is at the end, perhaps unjustly, a slight feeling of dissatisfaction with Maconochie, not with his heart but with his head, something about him of the solemn innocence of the Enlightenment and its over-confidence in a priori reasoning. "To make society good by making men better" is an admirable aim but the difficulties of making men better were underestimated in the first flush of the utilitarian era and perhaps the experiment was more imperatively called for in higher quarters than the gaols if the desired result was to be achieved.

The essence of Maconochie's theories seems to have been the substitution of sentences to a specified quantity of labour for sentences to a specified period of time, to be ascertained by fixing the number of marks which the prisoner had to earn before release, such marks

to be awarded for labour, diligence and good conduct and forfeited for misbehaviour. Each sentence was to begin with a short period of restraint and deprivation "with the object of inducing penitence and humility" and then to run its course through stages of successive emancipation. In the later stages the prisoner was to join a group of five or six who were to earn their marks as a group. This seems obviously preferable to the brutalities of the 18th and early 19th centuries but I must confess to some sympathy with the criticisms of Captain Forster, cited by Mr. Justice Barry, that the theory places a premium on strength, skill and intelligence whereas the weaker, duller and more shiftless convict is not demonstrably deserving of a heavier punishment. This system has not, so far as I know, ever been adopted in its entirety. It bears only a superficial resemblance to the system of automatic remissions forfeitable for misconduct prevalent in Australia today.

Mr. Justice Barry's final chapter sums up Maconochie's achievement. The author brings experience and realism to curb the Pegasus of reformative penology. He points out that so long as the desire for and the belief in the justice of retribution form part of the popular ethos, no system of criminal law can entirely disregard it. He rightly warns against the danger of permitting the influence of psychiatry to become so great that men are punished or restrained because of their tendencies rather than their actions.

After all, however, this is a biography, not a thesis, and by the standards of biography it should be judged. In his presentation of his hero the author rises at times to a noble eloquence. He shows us a man generous, compassionate, tenacious and beloved. "The three universally recognised moral qualities of man" says Mr. Justice Barry, "are wisdom, compassion and courage. Maconochie had these three in generous measure and he bought them fully to the service of mankind." If at the end we pay homage with less reservation to his virtue than to his wisdom, this would not have been the view of the 1,800 convicts who on the 25th May 1840, a few weeks after Maconochie's arrival in Norfolk Island, were to their amazement loosed from their cells and fetters and allowed to celebrate the Queen's birthday with a ration of fresh pork, a glass of rum and lemon juice, a fireworks display and a theatrical performance given by themselves, a day which passed without accident or disorder.

J. J. BRAY*

* LL.D. (Adel.). Queen's Counsel, of the South Australian Bar.

CONFLICT OF LAWS, by B. D. Inglis, B.A., LL.M. (N.Z.), Jur.Dr. (Chicago).

Wellington: Sweet and Maxwell (N.Z.) Ltd., 1959. Pp. i-xxi; 1-513. £4/10/- (Australian)

Conflict of Laws or Private International Law, as it is also known, is a comparative newcomer to our legal system. The common law courts did not commence to develop rules for application and recognition of foreign laws and judgments until the eighteenth century, and

their first attempts were confused and haphazard as contemporary law reports show. Legal literature was even slower in appearing. The first comprehensive treatise on this subject was not published until 1834 when Joseph Story had successfully completed his famous Commentaries on Conflict of Laws. The first approach to a systematic study and exposition of conflict of laws was therefore made not in England where it could have been expected, due to rapid territorial expansion and ever-growing foreign trade, but in the United States of America where Story's work had .been preceded in 1828 by an interesting monograph, The Dissertations on the Questions Which Arise from the Contrariety of the Positive Laws of Different States and Nations, written by Samuel Livermore and published at New Orleans. Admittedly, some problems of conflict of laws were discussed in England during the same period. These can be found in Henry's work called *The Judgment of the Courts of Demerara in the Case of Odwin* v. *Forbes,* published in 1823 and in Dwarris' General Treatise on Statutes published in 1830 and 1831. But these discussions were limited in their scope, and could not compare with the more serious attempt of Livermore. The first English work which could be regarded as a comprehensive survey of conflict of laws problems was William Burge's *Commentaries on Colonial and Foreign Laws,* but it was not published until 1838. It dealt with a large variety of subjects of which conflict of laws constituted a minor part only, and in its discussions of conflict of laws rules it relied heavily upon Story's findings. Although it canvassed most of the problems discussed in Story's work it never achieved the same fame and popularity. It was not until 1858, the year when Westlake published his Commentaries of Private International Law, that the English legal profession could boast of a work which had been written by one of its members and could be favourably compared with Story's work. Since then books on different aspects of conflict of laws have been published in England and United States of America with an ever-increasing regularity. Today we have the rather happy situation where a discriminate reader may choose from a wide selection of treatises, text-books, monographs, case-books and collections of essays. In recent years publications on Conflict of Laws have been especially voluminous. In England Dicey's and Cheshire's well-known works have gone into seventh and fifth editions respectively. In the United States of America Professor Ehrenzweig has made a major contribution with the first volume of his interesting and stimulating work "Conflict of Laws". Another American publication, the Bilateral Studies in Private International Law, dealing with a comparative examination of the conflict of laws rules of different countries has been enriched by several volumes. A recent Australian contribution to this series is Professor Zelman Cowen's book on American-Australian Private International Law.

These observations are not made to show that research in the field of conflict of laws has reached a point of saturation. On the contrary, there are still numerous topics, indeed too many, awaiting exhaustive and detailed study. They indicate, however, that there is no real demand for further text-books of the type exemplified by the works of Dicey, Cheshire, Graveson, Schmitthoff unless they achieve the outstanding standard of Professor Ehrenzweig's work. Unless a new textbook can satisfy the test of originality of Ehrenzweig's book new

volumes in this field are of little service to the legal profession or legal education.

These considerations must have been known to Dr. B. D. Inglis because in the preface he states that his aim is to present a study of conflict of laws rules from "an Antipodean viewpoint". Such study may be justifiable because as Dr. Inglis points out the Australian and New Zealand conflict of laws rules differ now in many respects from their English counterparts. These differences, the author believes, will become more substantial with the passing of time. Unfortunately, Dr. Inglis does not acknowledge anywhere in his work that, at least, a partial examination of such differences has been already made by Professor Cowen in his book on American-Australian Private International Law. A claim for originality may be lost in such circumstances.

However, Dr. Inglis' book may claim originality in one other aspect. In addition to containing textual material on the different topics which make up the subject of conflict of laws, written by the author, it has the additional interesting feature of incorporating within its pages lengthy excerpts from some sixty cases and a number of English and New Zealand statutes. In this respect the book represents a merger between a text-book and a case-book. This is, indeed, a splendid innovation, the purpose of which is, to borrow from the preface once again, to enable the reader to "have ready access to the important cases". This innovation has a lot to commend it in that it will enable the student as well as the legal practitioner to find all or most of the relevant material within the covers of one book, thus saving numerous hours of research and copying.

Whether the book can achieve that purpose must depend to a great extent on thorough and discriminate selection of the available material. Conflict of laws is now an extremely large subject, and its condensation within the 513 pages which the book contains, must require a careful and brief analysis in its textual part of the existing principles and rules of conflict of laws in Australia and New Zealand, as contrasted with those of England. It must also have a careful selection of excerpts from those cases and statutes which may be truly considered as illustrating such differences. Unless these requirements are achieved the book will prove to be of little service to the legal practitioner and will be certainly dangerous to the student who in his reliance on the material presented within the book may form a wrong opinion of the law. Perhaps, the best approach to determine whether the author has succeeded in achieving the aim which he has set before him is to examine the contents of the book in some detail.

The book commences with a general examination of Conflict of Laws. Although the author agrees with Dean Prosser (Selected Topics on the Law of Torts (1953), p. 89), that this subject "is a dismal swamp, filled with quacking quagmires, and inhabited by learned but eccentric professors who theorise about mysterious matters in a strange and incomprehensible jargon" he immediately sets out to clarify it in a simple and attractive way. He insists that a Conflict of Laws problem constitutes no more than the ordinary domestic law case except that some of the facts contained therein are connected in some way with some foreign country. This is a sweeping generalization as there are many law cases, especially of mercantile character, containing points of contact with foreign countries but in no way requiring use

of conflict of laws rules. Unfortunately, this is not the only unsupportable generalization appearing in this book. For instance, on page 73 it is stated that domicile provides the sole jurisdictional basis in divorce proceedings. Today due to many legislative provisions this is not true unless the statement is appropriately qualified.*

The introductory chapter is followed by a detailed examination of the judicial process developed by the courts for solution of conflict of laws problems. Dr. Inglis' views on this question are not by any means new. Walter Wheeler Cook in his Logical and Legal Bases of the Conflict of Laws presented them once before. But it is interesting to read what was once Cook's argument in a more simplified and abbreviated version and to watch how Dr. Inglis does away with the complex ideas and thoughts permeated with notions of idealism, nationalism and internationalism which have hitherto ruled the field of conflict of laws. Dr. Inglis' own views on the question of judicial process are more simple. He does not appear to be concerned with the reasons for existence of Conflict of Laws but accepts unequivocally that it must rest upon the vague and unsatisfactory principle of comity of nations.

Upon establishing this basis he proceeds to describe briefly the conflict of laws rules dealing with admission and proof of foreign laws. Here the author expresses two views of doubtful validity. The first, on page 5, consists of a statement that foreign laws were not considered or applied in England until the second half of the nineteenth century. It is possible that the author meant eighteenth century and not nineteenth century but even then the statement is too vague as the admiralty courts which at the end of the seventeenth century had lost most of their jurisdiction to the common law courts had applied foreign laws continuously during their existence. The second view refers to the presumption that foreign law will be presumed to be the same as English law unless it is proved otherwise. In Australia the validity of the presumption has been judicially questioned on several occasions insofar as it applies to divorce proceedings (*Zoubek* v. *Zoubek* (1951) V.L.R. 386; *Maksymec* v. *Maksymec* (1954) 72 W.N. (N.S.W.) 522).

The author next launches into a heated examination and criticism of the most controversial doctrines of conflict of laws: renvoi and classification. The placing of these topics at the beginning of the book is of doubtful value considering that it is primarily addressed to students. Undisputably, there is a logical connection between proof of foreign law on the one hand and renvoi and classification on the other. The first deals with the procedural requirements for admissibility of foreign laws, and the second with the method and extent to which our courts will consider them. But this is as far as logic will take us. To

* See the Commonwealth Matrimonial Causes Act 1945-1955 ss. 10, 12A and the Western Australian Matrimonial Causes and Personal Status Code s. 14. Other States of Australia have also extended their jurisdiction by providing a "fictitious" domicile for deserted wives: see Victoria Marriage Act 1958 s. 72; South Australian Matrimonial Causes Act 1929-1941 s. 43; New South Wales Matrimonial Causes Act 1899 s. 16; Tasmanian Matrimonial Causes Act 1919 s. 3; Queensland Mat. Causes Acts Amendment Act 1923 s. 3. In New Zealand the "fictitious" domicile is embodied in s. 12 of the Divorce and Mat. Causes Act 1928. The author mentions some of these statutory provisions on p. 307-309. All the above provisions are now superseded by the Commonwealth Matrimonial Causes Act 1959.

bombard students with the complex ideas which pervade renvoi and classification at the commencement of their course in conflict of laws could easily create teaching difficulties. However Dr. Inglis' treatment of these topics has been overtly simplified. After discarding the views of some of the other writers on conflict of laws that renvoi is either useless or, if existing, has only a limited application, he arrives at the conclusion that it is the underlying principle of every conflict of laws case. Whenever questions of foreign law are submitted in evidence to our courts the difficult problem arises whether the whole of such law must be taken into consideration including its conflict of laws rules or only some particular part of it. This problem is complicated by the fact that sometimes the conflict of laws rules of the foreign law may be contradictory to ours, leading to the additional complication of determining which body of rules is to prevail. The only solution in such circumstances can be an arbitrary one, either our conflict of laws rules or those of a foreign country must be disregarded for the sake of reaching a decision. Different logical explanations have been given to such an arbitrary solution. They can be found in most of the text-books including the present work. There are supporters of the no-renvoi rule, of the single or partial renvoi rule and, finally, of the double or total renvoi rule. Dr. Inglis belongs to the supporters of the double renvoi rule which requires our courts after deciding that some foreign law is applicable to apply such law as the courts of that country would do it. But he goes further in maintaining that there is nothing unusual about this approach as this is the normal method of determining any type of expert evidence. Consequently, renvoi is no more than another conflict of laws rule dealing with proof of foreign law, and any attempt to construe it into a theoretical doctrine upon which the whole of our conflict of laws rests is not only of doubtful validity but is also the inexcusable origin of all confusion which has infested this subject. Dr. Inglis' explanation is very attractive, and will prove successful not only with the reviewer but also with those students who were taken through the hair-splitting technique of comprehending a doctrine of renvoi which, in fact, had and has no existence in the English system of conflict of laws.

In a similar fashion Dr. Inglis does away with classification in the third chapter of his book. For many years text-book writers have been concerned with the so-called choice of law problem. Briefly, this problem deals with determining the limits to which foreign laws are applicable in any particular conflict of laws case. It was commonly believed that before a foreign law could be applied by our courts it had to refer to the same cause of action as was pleaded in the particular proceedings. This procedure necessarily involved detailed examination and classification of foreign laws according to categories existing in our legal system, leading inevitably to a number of practical and theoretical difficulties. As usual, there were hardly any judicial pronouncements on this problem, and after analyzing it at some length Dr. Inglis has arrived at the reasonable and logical conclusion that in practice no problem exists here at all. He finds that our courts do not attempt to classify foreign laws but apply those of them that appear to be material and relevant to the issues of the particular cases. Dr. Inglis supports this explanation by quoting extensively from those judicial authorities which appear to have considered this question, and his argument is both attractive and convincing.

The ensuing three chapters constitute the bulk of Dr. Inglis' contribution to the understanding of Conflict of Laws. The textual material in the remaining chapters except, perhaps, those dealing with status and adoption, contain little that has not been discussed in greater detail in other text-books. The chapters dealing with domicile, legitimacy, legitimation, divorce and matrimonial causes, contracts and torts have a marked unevenness. Valuable space is taken up for lengthy discussions of some minor rules of doubtful practical or theoretical value, whereas many important Conflict of Laws problems are completely ignored. Presentation of important rules has been sacrificed to a discussion of author's own reformatory and counter-reformatory opinions. For instance, in the chapter on domicile the question of acquisition of domicile by members of armed forces or refugees is completely omitted from discussion although it is a topic of some importance in Australia, if not New Zealand. Instead, the author devotes some four lengthy paragraphs to a philosophical and sociological discussion on the derivative domicile of married women, a matter on which there is now general agreement. His treatment of such topics as administration and intestate succession, wills and testamentary succession, seem to leave a large number of pertinent questions completely unanswered. And nowhere does the book contain any systematic discussion of the property law of conflicts, the jurisdictional basis in Conflict of Laws cases, or recognition and enforcement of foreign judgments, which are all topics of primary importance.

Although the author claims that his aim is to present the Australian as well as New Zealand conflict of laws his use of Australian material is very disappointing. He does not discuss the problems of full faith and credit or diversity jurisdiction at all, nor does he make any reference to them anywhere in the book.

No reference is made to such vital Australian legislative provisions as the Service and Execution of Process Act 1901-1950, the State and Territorial Laws and Records Recognition Act 1901-1950 or the Commonwealth Matrimonial Causes Act 1954-1955. This last omission is especially serious as it makes the chapter on Jurisdiction in Divorce completely valueless to any Australian reader. The use of State legislative provisions is also incomplete in many places. The few references that are made to such provisions will hardly entitle the author to claim that his book deals with Australian Conflict of Laws. More Australian Conflict of Laws references can be found in the latest Dicey. Australian case material has been also used very sparingly. Excerpts from only three Australian cases have been reproduced in the book, and these are *Ford* v. *Ford* (1947) 73 C.L.R. 524; *Thompson* v. *Thompson* (1950) 51 S.R. (N.S.W.) 102; and *Fenton* v. *Fenton* (1957) V.R. 17. No excerpts from any Australian statutes have been reproduced. But this is a small fault in comparison to the lack of Australian cases in the textual parts of the book. The more important Australian decisions on domicile have not been discussed or mentioned either in the text or in footnotes. The only two cases which are mentioned on this topic are *Tappenden* v. *Tappenden* (1908) 25 W.N. (N.S.W.) 84 and *Kertesz* v. *Kertesz* (1954) V.L.R. 195. Some other important decisions coming to the reviewer's mind which have not been mentioned are: *Cristofaro* v. *Cristofaro* (1948) V.L.R. 193 (dealing with proxy marriages); *Maksymec* v. *Maksymec* (1954) 72 W.N. (N.S.W.) 522 (dealing with common law marriages); *Morris* v. *Morris*

(1955) S.A.S.R. 80 (dealing with the *Travers* v. *Holley* ([1953] P. 246) situation in South Australia; a decision of great interest as it provides a different view taken in Australia on *Travers* v. *Holley* to that taken in *Fenton* v. *Fenton* (1957) V.R. 17); *Vasallo* v. *Vasallo* (1952) S.A.S.R. 129 (dealing with recognition of foreign nullity decrees and adopting a view different to that taken in *Chapelle* v. *Chapelle* (1950) P. 134—indeed, that important case is not mentioned either); *Merwin Pastoral Co.* v. *Moolpa Pastoral Co.* (1932) 48 C.L.R. 565 (dealing with inter-state contracts). These are only some of the more obvious failings of this work. Considering all its shortcomings it is doubtful whether it can be of any use to the Australian legal practitioner or student.

The book is published in a convenient format bound in beautiful azure-coloured cloth, and is easily readable as it is printed in well-spaced large print. It contains astonishingly few misprints (p. 50—"huband" instead of "husband"; p. 73— "1 H.H.L." instead of "1 H.L."; p. 171—"susequent" instead of "subsequent"; p. 196 note 21—"Faconbridge" instead of "Falconbridge"; p. 206—"new York" instead of "New York"). Some disappointing omissions are the lack of a Table of Australian Statutes (there are Tables of English and New Zealand statutes) and the absence of a bibliography of further reading materials which could prove of great assistance to the student.

I. I. KAVASS*

* LL.B. (Melb.), LL.B. (Adel.), Senior Lecturer-in-Law, University of Adelaide.

SOME PILLARS OF ENGLISH LAW by Jean Duhamel and J. Dill Smith

London: Sir Isaac Pitman and Sons Ltd.; 1959. Pp. i-xi, 1-178. £1/11/6 (Australian).

This is one of those manuals on law enjoyable to read, full of useful information, excellent for its purpose—but limited rather severely by that purpose. The "pillars" in the title are not people, but principles and procedures. An English barrister and a French barrister (trained partly in England) joined forces to explain some aspects of the English legal order to a group of French public servants—with real success. Doubtless a similar group of Australian officials concerned with administration of justice and police would gain considerably from reading these talks. On the other hand, the approach is too narrow for the book to be specially useful to law students, to practitioners or to academics. Probably New Australian lawyers, beginners in law, and laymen interested in the protection of certain personal rights would learn much of benefit; but only in certain areas of public law.

What the authors have to say about the English Judicial system, the preliminaries to a trial and the Police organisation is entirely admirable. The Australian lawyer, however, will perhaps gain most from the chapters on "Contempt of Court", "The Courts and the Press" and "The Rules of Evidence". The authors have relied on the latest cases in these fields and compared in some detail the English procedures with those employed in France. If one had to give an

address on any of these topics to a lay audience, one would find all the vital material ready for delivery. And the somewhat detailed analysis of the workings of English police forces has already enabled this reviewer to follow detective stories with greater profit. He also was made aware of some interesting oddities: for example, that the Recorder of London is the only Judge in England who is elected (p. 12), that Courts of Pie Powder are still to be found in Bristol (p. 18) and that the first local authority to set up a police force was the City of London in 1736. Finally one should commend the exposition of recent leading cases on Habeas Corpus proceedings—a lucid and most satisfactory survey.

F. K. H. MAHER*

* M.A., LL.B. (Melb.). Senior Lecturer-in-Law, University of Melbourne.

REPORT OF THE ROYAL COMMISSION OF INQUIRY ON CAPITAL PUNISHMENT

Colombo: Government Publications Bureau, Sessional Paper XIV; 1959.

There is always a quickening of interest to be felt in the examination of old principles applied to new facts, old problems encountered in new contexts, old strategies or tactics carried out with fresh troops. One has become so accustomed to assessing the arguments about capital punishment principally against a background of English, Australian and American experiences that any debate as to their respective merits has become more an exercise in mental agility than an earnest search for true enlightenment and fundamental principles. The dedicated student of criminology will inevitably therefore derive fresh enthusiasm for his studies on capital punishment, whatever his privately nourished view may be, by a study of the Report of the Commission of Inquiry on Capital Punishment which sat in Ceylon in December, 1958 and January and February 1959. The Commissioners were furnished with terms of reference which would have filled them with alarm if they had brought to their task anything but minds prepared by extensive study and experience, and an immense energy and determination to overcome the many formidable obstacles which confronted them. The reports, the majority consisting of Professor Norval Morris of the University of Adelaide Law School, and Professor T. Nadaraja, Dean of the Faculty of Arts and Head of the Department of Law, of the University of Ceylon, who favoured the abolition of capital punishment, and the dissenting view of Sir Edwin Wijeratne, K.B.E., a former Ceylon Minister of Home Affairs and Ambassador to India and United Kingdom and Barrister of Inner Temple, are models of clarity. What has so often been said of the great Salmond's writings can equally be said of this publication, that while we cannot agree to everything in it, at least it is possible to know exactly what parts we disagree with and why. Indeed, there is a deceptive simplicity and persuasiveness about both reports that continually sends the reader scurrying back to first principles. The reader will also be brought to realize how greatly the force, and often the validity of the various

arguments for and against capital punishment (summarised neatly in Chapter III), depend upon the efficiency of the police force and the law enforcement authorities generally, a speedy and fair pre-trial process and an impeccably conducted trial.

The reports disclose a number of features in the administration of the criminal law in Ceylon which differs from what we have come to expect (majority verdicts in murder trials, widespread paying, protracted delays, refusal of bail, impredictability of reprieves) which cannot fail to affect the arguments of those who claim that capital punishment should be retained in existing conditions, and those who claim that capital punishment has failed.

Other interesting chapters are Chapter VII on Murder and Mental Illness (in which the best of current suggestions for the amendment of the M'Naughton rules are concisely stated and examined) and Chapter IV on the Modification of Capital Punishment (in which is examined the arguments of those who advocate the limitation of capital punishment to cases where there is protracted premeditation or aggravated horror and violence).

The majority report also performs a useful duty for the serious student who dislikes discussion in generalities and prefers to turn to facts and figures; it brings home to the reader the extreme difficulty always experienced by those who try, however conscientiously, to make use of statistical material and the extreme care with which such material must be scrutinised before any sort of argument, whether tentative or confident, can be based upon it. For example to speak of the "murder rate" of a country immediately poses a dozen or more problems. Does "murder" mean "convictions for murder" or "charges of murder", or does it include also "homicides known to be murder" and if "known", then "known" to whom, or again does it include "felonious violence" such as carried the risk of murder (attempted murder, wounding or shooting at with intent and so on)? Whether or not the reader agrees or disagrees with the methods or conclusions of the majority, the workmanlike manner in which they tackled the difficulties which confronted them commands respect and will repay close study. Speaking for myself (which is something a reviewer should do with diffidence and circumspection) I consider that the spheres of investigation would have to be considerably widened before any conclusions could be founded on statistics either alone or substantially. It is likely too that opinions among readers will differ widely on such topics (which receive close consideration) as the extent to which the law given should pay attention to public opinion ("informed" and "uninformed") or the weight which should be attributed to the views of judges, police officers, gaol authorities and criminals themselves, all of whom have more or less close contact with criminals at various stages of their careers. Again, I should have liked the majority reports to have offered fuller reasons for treating the communal riots of 1956 and 1958 as exceptional and as material upon which they could not safely base any general conclusions. I could not entirely bring myself to accept the view that the causes for the riots were really outside the terms of the inquiry. But my stating of these reservations merely serves to emphasize what I have already indicated, that the material which formed the basis of these reports and the method of its treatment are so stimulating and interesting

that a student of criminal law and criminology will find it essential to read and consider them fully and carefully, in whatever country his immediate interests happen to be.

W. A. N. WELLS*

* M.A., B.C.L. (Oxon); LL.B. (Adel.), Senior Solicitor, Crown Law Department, Adelaide.

THE SANCTITY OF LIFE IN CRIMINAL LAW, by Glanville Williams, LL.D.

London: Faber and Faber Ltd., 1958, Pp. 1-310. £1/10/- (Sterling).

Dr. Glanville Williams has established himself as the leading commentator on the criminal law of the Anglo-American legal systems. He is prolific and original; his writings are playing an important part in the general recrudescence of legal interest in the criminal law and its role in society which is now apparent in England and the United States, an interest which has, in effect, been dormant since Sir James Fitzjames Stephen's death. "The Sanctity of Life in Criminal Law", which is an expanded and revised version of five lectures delivered at the Columbia University School of Law as the 1956 Carpentier Lectures, is another major contribution by Dr. Williams to this development.

The topics discussed in this book are Infanticide and Child Killing, Contraception, Sterilization, Abortion, Suicide and Euthanasia in their relation to the Criminal Law; "The connecting thread is the extent to which human life, actual or potential, is or ought to be protected under the criminal law of the English speaking peoples." (p. ix.)

Lawyers and legal writers are traditionally reticent on these topics and the case law, such as it is, which touches on them is slight and circumlocutious. As lawyers, we have left it to the weekly scandal sheets to air these important legal, moral and social problems—and an unpleasant airing they are there given. There can be no doubt that they are important problems, plumbing deep and significant moral issues and forcing us to reconsider our rules of law in relation to developing knowledge in medicine, philosophy, theology, psychology and sociology.

Despite the furious rate of material and scientific advance in the first six decades of this century, I would suggest that the historian of the twenty-first century (if he lives) will regard the revolution in the role and function of the family as the most rapid change in contemporary society. The gravity of the social problems attendant on this revolution are gradually becoming appreciated — as the Lambeth Conference of 1958 reported (Report 2:142) "Everywhere in the world there is restless concern for the well-being of the family as a basic institution in society. This is most vividly clear against two backgrounds in particular. One is the swiftly-increasing degree of what is variously called the 'urbanizing' or 'industrializing' of our society.... The other is that of the urgent and mounting problems of population growth in many parts of the world." These and similar social pressures compel us, as lawyers, to be willing to reconsider the value and opera-

tion of the existing laws regulating the expression of sexual instincts within the family, and the laws protecting life and seeking to ensure its survival.

Dr. Williams' view will not command anything like universal assent. They would be dull if they did. He is, after all, grappling, from a rationalist utilitarian viewpoint with contentious moral issues involving the procreation and termination of life. If the reader wants easy instruction on these topics, let him look elsewhere — perhaps to the simplistic and frequently inaccurate analysis of them found in the accepted medico-legal authorities; if, however, he is interested to grapple intellectually with these complex but fascinating social problems, Dr. Williams is an excellent guide. Together with Hermann Mannheim's "Criminal Justice and Social Reconstruction" and Edmond Cahn's "The Moral Decision" the book under review is essential reading for any lawyer aiming to see these problems in larger perspective than the relevant rules of law.

The philosophical perspective of Dr. Williams' analysis is as follows: "a legal inquisition into conduct is not justified on moral or religious grounds if no sufficient social purpose is to be served. (p. 33) . . . Punishment is an evil that can be justified, but only when the evil of punishment (including its direct consequences) is less than the evil to be apprehended from the want of penal restraint (p. 225)." From this perspective he is extremely critical of the criminal law concerning sterilisation, abortion, suicide and euthanasia. His opinions are, in this reviewer's judgment, balanced and reasonable; but they will be regarded as extreme by those of his readers addicted to reliance on "the principle of the wedge", the flood-gates argument, who hold that if we cease to apply criminal sanctions to conduct of which we disapprove on moral and ethical grounds that conduct will thereby suddenly flourish and increase. Dr. Glanville Williams' approach would, however, seem to reflect a more realistic appreciation of the limited effectiveness of criminal sanctions in confining some of man's most basic instinctual drives.

Consideration of cases like that of *R.* v. *Bourne* ((1939) 1 K.B. 687) illustrates the need for this type of mature analysis of these problems. As will be recalled, Dr. Alec Bourne, in effect, compelled his own prosecution under The Offences Against the Person Act 1861, s. 58, with unlawfully procuring the abortion of a 14-year-old girl pregnant as a result of a shocking rape by a number of soldiers. Dr. Bourne embarked upon the case determined to fight it on those facts alone but, under legal advice, found himself varying the defence to suggest — which was quite likely not true — that the girl would be a physical and mental wreck were the pregnancy not terminated. There then followed an acquittal pursuant to a direction by Macnaghten J. which has provided little effective guidance to the medical profession facing the problems of therapeutic abortion, and none at all on the difficult question of psychiatric indications (such as threat of suicide) for performing that operation. It is not, of course, suggested that it was the trial judge's task to offer advice on these problems; all that is suggested is that neither case law nor legislation nor legal commentary provide sufficient guidance to the medical profession, and that a criminal sanction justified on the grounds that it will not be applied is an ineffective form of social legislation.

Dr. Glanville Williams argues for legislation permitting abortion during the first twenty-eight weeks of pregnancy upon certain widely defined medical, social or economic grounds. Having studied the records of over 100 abortions induced by a "professional" abortionist some years ago in another State, and the reasons why the abortions were desired, there seems to me to be strong arguments supporting Dr. Williams' recommendation. It is hard to see why a criminal sanction that is not enforced, and is known not to be enforced, should be preserved for doubtful social purposes. To urge this change in the law is, of course, not to "advocate abortion"; it is merely to oppose the retention of a too widely defined and unenforced criminal sanction.

The recent English case of Dr. Adams has caused many people to reconsider their attitude towards euthanasia and particularly towards the difficult line of demarcation between killing and giving necessarily rapidly increasing doses of pain-killing drugs. Dr. Glanville Williams' treatment of this whole problem is of great interest. Whilst reading it a transcript of the case of *People* v. *Werner*, decided last year in the Criminal Court of Cook County, Illinois, came to my attention and helped to give emotional life to Dr. Williams' analysis of the problem. Mr. Werner, aged 69, killed his wife, aged 63. She was bedridden and was suffering from advanced and entirely crippling rheumatoid arthritis. Mr. and Mrs. Werner were being supported by their children. Shortly after they were informed that it was necessary for them to go to an old people's home, Mr. Werner suffocated his wife and attempted to take his own life by swallowing 20 sleeping pills. He became unconscious, was taken to hospital and his life was saved. Evidence was given and accepted by the prosecution that for the past two years Mr. Werner had been sleeping on the floor beside Mrs. Werner's bed so as to be in a position always to take care of her; that they were a deeply devoted couple; that she had begged the doctor to terminate her suffering; and that Mr. Werner had had to feed his wife, carry her to the bathroom, and look after her entirely for several years.

The case was heard by Chief Justice Marovitz who permitted the acceptance of a plea of guilty of manslaughter by the defence and who then, with unusual courage, made a finding of not guilty saying:—

> "Courts don't condone mercy killings and I do not, but if he has a home to go to, and we certainly have no reason to be concerned about his committing any comparable crimes or any further crimes . . . I would rather send him home to his daughter and son without the stigma of a finding of guilty and I am not reluctant to do it if the family feels that they wouldn't have any objection. . . .
>
> Mr. Werner, this is a time in one's life where good reputation and decency over a span of years pay off. I can't find it in my heart to find you guilty. I am going to permit you to go home with your daughter and live out the rest of your life in as much peace as you can find in your heart to have."

To turn to a happier theme. The Medico-Legal Society of South Australia, which lay moribund for some years, has now been revived and there is obviously much interest in both professions in the discussion of common problems. "The Sanctity of Life in Criminal Law" provides much information on a group of such problems and the

synthesis of the social sciences there essayed is a model for all who realise that the law is but one of a variety of interdependent social controls. It can most confidently be commended.

NORVAL MORRIS*

* Ph.D. (Lond.); LL.M. (Melb.); Bonython Professor of Law, University of Adelaide.

THE ATTORNEY IN EIGHTEENTH CENTURY ENGLAND, by Robert Robson.

Cambridge: Cambridge University Press, 1959.

This book is one of the series entitled "Cambridge Studies in English Legal History" which contains works by (among others) Sir Percy Winfield, Professor Plucknett and Mr. David Ogg. Dr. Robson is apparently a member of the Faculty of History, not of the Faculty of Law; but the series, and this book as an example of it, are proof of the great value of co-operation between sister Faculties.

"This subject", says the author in his preface, "was suggested to me by Dr. J. M. Plumb." To the layman—and this reviewer does not pretend to be otherwise—the subject does not at first sight appear self-explanatory. Why, one asks, was the eighteenth century chosen? The author makes himself clear; even to this reviewer, by the end of the book. In the history of the Solicitors' branch of the legal profession, that century was crucial. Before it, attorneys (the common law practitioners) and solicitors (the appropriate name for those who practised in the Court of Chancery) were ill-organized, ill disciplined, of inferior social status, and not always clearly distinguishable from mere clerks, "scriveners" and process-servers. In the nineteenth century, on the other hand, the profession moved into the position which it occupies today. It is well-disciplined with a strict and largely self-administered code of conduct and etiquette, and mostly "upper-middle class" with a few peers, and a sprinkling of knighthoods for the most eminent.

The bar has for centuries provided a quick road from obscurity to the highest social eminence—it would be interesting to count the number of existing peerages which were founded by men who rose from nowhere to high judicial office; but the position of solicitors has changed slowly and steadily. Dr. Johnson could say to a company which obviously enjoyed the joke, "he did not care to speak ill of any man behind his back, but he believed the gentleman was an *attorney*." Lord Melbourne, the great-grandson of an attorney, was Queen Victoria's first Prime Minister. Mr. Lloyd George, a solicitor from Wales, became Prime Minister in 1916. In passing it may be noted that the solicitor's profession in England hardly seems to have been affected by the process which in the twentieth century, has so noticeably happened to the City, the Stock Exchange, and Lloyds—the invasion of large numbers of the tax-impoverished nobility. Possibly the reason is that the solicitor still has to spend too long in qualifying himself, and when qualified has to work too hard, to make the financial rewards attractive to those who wish to provide, by their own efforts, for that licence which in an earlier generation could be commanded by inherited wealth.

Dr. Robson's book convinces the reader that it was in the eighteenth century that the vital steps were taken in the upward journey of the solicitor's profession.

It would be quite wrong, however, to give the impression that the book deals only with the social status of the profession. Solicitors in England and in those parts of the Commonwealth which have adopted English standards of conduct for the profession, work under a code of conduct and etiquette which though they may not often think about it, is something of which they should be intensely proud. Generally speaking, too, it is a code which is effectively and impartially enforced, largely by the profession itself. The foundations of this code, and of the tradition of self-government by the profession, were laid in the eighteenth century.

The earliest meetings of that splendidly named body, the Society of Gentlemen Practisers in the Courts of Law and Equity, were in the 1730's and throughout the century it fought an excellent fight for what are now accepted as proper professional standards. An unfortunate dispute with the Scriveners' Company, of the City of London, which lasted for eleven years and ended in a victory for the Society, appears to have been no more than a manifestation of local rivalry. To this day there are two bodies of practitioners in the island of Tasmania.

It should be remembered, and Dr. Robson's book clearly shows, that the influence of the Society of Gentlemen Practisers was almost entirely built up by voluntary and unofficial effort. The solicitors' profession was poorly represented in Parliament, and hardly ever acted by means similar to what would now be called "pressure group" tactics, or lobbying. The story is, rather, one of the continuous application of high principles by a number of men of education and sensibility who felt their personal and collective responsibility to society, and vented their influence largely by precept and example rather than by compulsion. Towards the end of the century, an effort was made to establish a Royal College of Attorneys and Solicitors, to be governed, under Royal charter, by the judges and senior barristers. The Society of Gentlemen Practisers effectively opposed this scheme, which never came to anything. Solicitors, it was felt, should be able to govern themselves by their own rules. Nevertheless, the Society died in 1810, and in 1825 was founded the Incorporated Law Society, which is by far the most important body of solicitors today. It has a Royal charter; it has disciplinary powers; it holds examinations; it is, indeed, a body whose official status is universally recognized. But it is still a body controlled wholly by, and for, solicitors, and surely the shades of the Society of Gentlemen Practisers would approve. Dr. Robson's book merely touches on a theme which would be a fascinating one for a historian who is also, or has been, a solicitor—a history of the ethics of the profession. The principal source would surely be the minutes of the Incorporated Law Society.

Dr. Robson is at his most interesting, at any rate for this reviewer, when he generalizes on such things as the influence of solicitors as an organized body, or (in his last chapter, called "The Road to Respectability") on the rise of the profession considered as one aspect of the rise of the middle class. He is less interesting, indeed he verges on the dull, when he examines closely the lives, professional careers, sources of income, and so forth, of particular

men or families whose papers he has studied in detail. Much of the latter kind of material in the book seems a little heavy-handed and unrelated to the main theme.

R. A. BLACKBURN*

*B.C.L. (Oxon) of the South Australian Bar.

EQUAL JUSTICE UNDER LAW, by Carroll C. Moreland.

New York: Oceana Publications Inc., 1957. Pp. 1-128.

For the non-American lawyer or law student, this volume serves as an excellent introduction to any first study of American law. Here in the space of 82 pages, Professor Moreland of the University of Pennsylvania Law School gives an extremely lucid and readable account of the main features of the complex workings of American legal organisation. Beginning with the background of the American legal system the author summarises the Constitutional guarantees of the Federal and State Constitutions, outlines the jurisdiction and organisation of the State and Federal courts and tells how these courts operate. Two final chapters show how the legal system is manned and outlines the forms of legal aid available in the United States.

Much of the material here is not available elsewhere without considerable research. This is particularly so in respect to the chapter on the jurisdiction and organisation of State courts. The American state court structure often differs from county to county within a state and state court structures differ far more markedly than they do in Australia. Professor Moreland synthesises the differences and culls out for the reader a workable understanding of the State court systems which is quite sufficient for the average non-American reader, who does not have to concern himself with the extremely complex jurisdictional problems which always tax the American lawyer. The Federal Court structure is also covered most adequately. Charts of the Federal Court system and a typical state system, which are contained in an appendix, assist to clarify the text.

The chapter on Constitutional guarantees puts in its correct perspective the great constitutional debate on integration which has so exercised the United States Supreme Court in this decade. Only too often the non-American fails to understand the strictures of the 14th amendment, and its limitations upon the operation of Federal courts in this area. Professor Moreland puts the record straight by showing how court-made integration can at best be only a lengthy and piecemeal process. What is often forgotten, too, is the fact that not only the American Constitution but also State Constitutions protect individual rights and liberties. The author brings this to our attention in this chapter and provides a valuable service by adding in an appendix a detailed listing of the rights and liberties which are specifically provided for in State constitutions.

A point of difference in the American legal system from present day practice in most other common law countries is the retention of Grand Juries in many jurisdictions. Professor Moreland defends the Grand Jury procedure against the criticism frequently levelled at it in America that it is a repetition of the preliminary hearing. He points out that

there are two practical reasons why the Grand Jury still serves a useful purpose in the American legal scene. Firstly, he says, a Grand Jury may refuse to indict after a Magistrate has found a prima facie case, and in so doing relieves the prosecution and the accused of the necessity of going to trial. Secondly, a Grand Jury is an investigating body, which exercises its right to investigate matters which come to its attention, with the result that it may on its own motion indict persons who it determines to be violators of the law. These arguments carry weight because of the system which prevails in most American states where prosecutors and the minor Judiciary at least, are elected by popular ballot. The first argument for Grand Juries is perhaps more of a criticism of the poor quality of elected Magistrates who frequently staff the lower courts in the United States. But until such time as it is politically expedient to change the present system there is a good argument to be made that there is a need to retain a representative public "safety valve" like the Grand Jury to avoid the mistakes of political appointees and elected magistrates who are sometimes prone to political pressures in their judicial work. The second argument carries much weight in certain areas of the United States. There the Grand Jury has proved to be an important method of securing indictment for serious offences, and investigating government corruption, when elected prosecutors have failed to do their duty when crime has been detected. The Grand Jury has been the only effective body through which public spirited citizens could hope to have the law enforced.

Valuable adjuncts to this volume are the copious appendices and the full Bibliography. The Virginia Declaration of Rights, the Federal Bill of Rights and other Constitutional guarantees are set out. The Canons of Judicial and Professional Ethics of the American Bar Association are printed in full. The Bibliography provides a good starting point for more detailed researches into the American legal system. Added features are an Introduction by David M. Maxwell, a former President of the American Bar Association, and an Epilogue by Dean Jefferson B. Fordham of the University of Pennsylvania Law School. Dean Fordham's comment is brief and to the point. It is a satisfying brief exposition of the Rule of Law working through the American legal system. Dean Fordham points out, that despite cross-currents, there has been substantial progress towards achieving social and economic justice in the United States through its legal system. This book is an excellent starting point for understanding the reason why the United States is steadily progressing towards the achievement of this end.

ALEX. C. CASTLES*

* LL.B. (Melb.), LL.M. (Adel.), J.D. (Chicago), Senior Lecturer-in-Law, University of Adelaide.