primarily for students, and Professor Graveson in this edition, as in the previous ones, has done very well.

ZELMAN COWEN*

The Concept of Law, by H. L. A. HART, Professor of Jurisprudence in the University of Oxford. The Clarendon Law Series. (Oxford University Press, Oxford, 1961), pp. i-x, 1-263. Australian price £1 19s. 3d.

It has already been said by some critics that this book wears too much the air of one revealing new discoveries for the first time, whereas most of what it expresses has been understood for many years—at least by sophisticates in the field. There is something in that criticism. In this reviewer's opinion, however, whether or not there are many new insights or new truths contained in it, this books deals with old questions with such clarity, and brings into balanced relation so many old puzzles about the nature of law, that it must be welcomed as a most valuable contribution to the literature. Further, it provides invaluable material for law students embarking on studies in jurisprudence. In the light of traditionally taught courses in jurisprudence in England, it is so nicely shaped to cover the opening problems of such courses[1] that it could well be taken as ten formal lectures to intelligent law students beginning a jurisprudence course. One may assume that its origins lie in ten such lectures delivered by the author at Oxford. If this is so it explains and justifies the air of revelation which is referred to at the beginning of this review. If those origins produce certain deficiencies in the book which will lead to its treatment by advanced scholars as a series of illuminating and stimulating articles rather than as a major work, at the same time they make the book much more valuable for students, and without doubt it will be read all over the world by English-speaking law students required to pursue courses in jurisprudence.

Although Professor Hart meets head-on the 'persistent question': 'What is Law?', and although he does review the more familiar answers that have been given to that question, he does not do it by attempting to describe or summarize the works of earlier writers—as has so often been done. He writes freshly and freely about the perplexities which have troubled others, and then sets out to make a 'fresh start' for himself. The book then falls naturally into two parts: The first brings the student to an understanding of the problems and puzzles about the nature of law which have been worked over in the past—brings him up to date as it were; and the second contains the author's lead for the resolutions of those problems and puzzles. In the course of that second part the relation of justice to morality, and of laws to morals are examined, and also the continuing arguments between natural and positive law theorists. In the last chapter the nature of international law is discussed as an illustration, in a well-argued field, of how the analytical method urged upon the reader works out in application.

The 'fresh start' referred to may be briefly described as another exercise by Professor Hart in the task of applying the lessons of linguistic analysis

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[1] In the past approached by a study of John Austin and by an introduction to the schools of jurisprudence.

produced by the philosophers to problems of the law.[2] It would be an impossible and presumptuous task to attempt to explain in the space here available how those lessons may be applied in the law. Probably no clearer introduction to the way they may be applied in the law exists than in this book. The philosophers who have pursued the path of linguistic analysis[3] and the jurists who have followed their lead have been charged with mere playing with words and with saying nothing of importance for the solution of the real problems which face lawyers. One of Professor Hart's principal messages is, that the elucidation of the meanings of words may be valuable not merely to throw light on words but to lead to the better understanding of facts and, in particular, the understanding of 'important distinctions, which are not immediately obvious, between types of social situation or relationships . . .'.[4]

Perhaps one significant example will serve both to illustrate the method adopted and also to provide ground for critical warning. In making his 'fresh start', Professor Hart sets out to explain the nature of rules and their role in legal systems. He takes the Austinian notion of law as made up of coercive rules and accepts that there was good reason behind that notion[5] in that it may be taken as true that where there is law, there human conduct is made in some sense non-optional or obligatory. He then examines the notion of obligation. He makes a primary distinction between saying that someone *was obliged* and saying that he *had an obligation*. He elucidates the meanings of those phrases by asking, as the linguistic and analytic philosophers teach us to do, how do we use those words? In what circumstances will the use of those words be accepted as accurate and meaningful? He says that, in the gunman situation where A orders B to hand over his money under threats that he will be shot if he does not, it can be said that B was *obliged* to hand over his money. He points out that you would not in these circumstances say that he *had an obligation* to do so. From this distinction he develops, beyond the Austinian attempts to give objectivity to the notion of having an obligation, a theory of obligation which rests upon the internal logic of a system of rules. But here, it is suggested, may be discovered a warning and a criticism. Do we really say that the victim of the gunman *was obliged* to hand over his money? Do we not more ordinarily say in those circumstances that he *was forced* to hand over his money? If he was obliged to hand over his money in the most commonly accurate use of the terms, then we would expect there to be some further motivation than mere fear of physical force. It may be that further motivation that links *was obliged* to *had an obligation* more closely than is suggested by Professor Hart. It is not suggested that this tentative criticism affects prejudicially the elucidation of the notion of 'having an obligation' which Professor Hart develops. It is suggested, however, that it provides a warning and points to some considerations which the author here hesitates to include in his reasoning. May it not be that the elucidation of words,

[2] See, for example, Hart, *Definition and Theory in Jurisprudence* (1953), and Hart and Honoré, *Causation in the Law* (1959).

[3] From Russell, Carnap, and Wittgenstein in his earlier period, to the later Wittgenstein, Moore, Ryle and many others: *e.g.* Ryle, *The Concept of Mind* (1949); Nowell-Smith, *Ethics* (1957); Wisdom, *Philosophy and Psycho-analysis* (1953); Passmore, *A Hundred Years of Philosophy* (1957).

[4] At Preface, p. vii.

[5] However defective it has proved to be as developed by Austin and his followers.

as acceptably used, sheds light not only on the terms themselves, and on the facts, social or otherwise, to which they refer, but also upon the psychological factors affecting the persons who use the terms? If this is so perhaps the Scandinavians[6] may be making a greater contribution to the understanding of the intricate workings of legal systems than this book would allow.

It has already been said that this book bears more the mark of a text for students than of a major jurisprudential work. The text is left uncluttered by detailed references and footnotes. The student who wishes to pursue the sources from which the author draws his material, or to gain a greater understanding of the works of jurists referred to or criticized in the text, is provided with extensive footnotes at the end of the book. Those footnotes, however, are designed to stimulate and guide student reading rather than to provide any complete collection of relevant references. This is not really a defect, of course; to provide such a collection would now be a major bibliographical task in itself.

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Precedent in English Law, by RUPERT CROSS, Fellow of Magdalen College, Oxford. The Clarendon Law Series. (Oxford University Press, Oxford, 1961), pp. i-viii, 1-268. Australian price £1 19s. 6d.

This work would be welcome in itself as the first full-length study of precedent by an English scholar. Now that the finding of the meaning and force of decisions has been acknowledged to be an art rather than a science, it is important that the canons of the art be thoroughly examined. Allen, Stone, Paton, Montrose and others have illuminated various facets of the topic in individual chapters and articles; the time was ripe, however, for a more systematic and comprehensive survey.

This is what Dr Rupert Cross has provided. He has read and weighed and sorted all the existing material, and arranged it in due order. He has resisted the temptation to dissect issues too finely—as well as the opposite temptation to hide them under some vague formula. When there has been a vigorous controversy he keeps a calm balance.

He has succeeded despite considerable handicaps. The Clarendon Law books are intended as a series of general introductions to different fields of law and jurisprudence 'designed not only for the law student but for the student of history, philosophy or the social sciences, as well as for the general reader interested in some aspect of the law'.

To lay the foundations for the non-lawyers, Dr Cross has had to set out the structure of the legal hierarchy and the elementary rules of the binding force of precedent; he could not assume any knowledge of even leading cases. Moreover, his audience includes first-year law students, others who are completing their course, law teachers and doubtless some practising lawyers.

All these groups will find the book very useful. Any individual, however, will have his own difficulties in making full use of it. The beginner in law will find topics being discussed that are presently beyond his reach; the senior student will skip over certain chapters; the layman will be

[6] *E.g.* Lundstedt and Olivecrona.

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