groups yields a handy framework through which to approach the main significance of the Charter.

This thematic organization is sandwiched, in Howard's commentary, between brief historical accounts of the events leading up to John's capitulation to the barons, and of the later influence of the Charter in the Middle Ages, in 17th century England, and in 17th and 18th century America. The historical account, which thus covers four distinct periods, is here done only in very summary form. Later in the series, however, there will be separate detailed studies of each of these four periods. The American narrative will be taken up by Howard himself, and the three English phases by noted English historians—J. C. Holt, Lady Doris Stenton, and Maurice Ashley, editor of *The Listener* and author *inter alia* of the delightful work *The Stuarts in Love*. The present summary is obviously intended only to whet the appetite, and provide the overall context, for these later studies in depth.

The bulk of the projected essays will contribute in various ways to the borderland area between law, legal history and jurisprudence. Each will be keyed to a specific chapter or chapters of the Charter—sometimes by way of thematic exploration, sometimes taking the words of the Charter merely as a keynote for the study of related bodies of legal ideas and legal experience, as is appropriate for a document whose influence as an ideological symbol has reached so far beyond its specific words. Thus, Sir Arthur Goodhart, now a Scholar in Residence at the University of Virginia, will write on the words "law of the land" in the famous chapter 39. Under the title " 'Law of the Land' in Asia", Professor Gyan Sharma of Jaipur, currently Director of the Indian Law Institute, whose stay at the University of Sydney Law School many of us will recall with affection, will discuss the problems of the reception and adaptation of English law in India. And H. R. Hahlo and I. A. Maisels will deal similarly with " 'Law of the Land' in Africa". For the rest, the chapters on property rights and local government will be discussed by American political scientists, John Bebout and Gottfried Dietze; and a distinguished array of American legal scholars—A. E. Sutherland, Yale Kamisar, D. J. Meador, and Thurman Arnold—will discuss national, and sometimes (as in Arnold's case) personal, experience with particular aspects of the Anglo-American "rule of law" ideology stemming from Magna Carta. (These four writers will deal respectively with the separation of Church and State, the guarantee of "equal justice", the right to habeas corpus, and procedural guarantees in criminal law.) Finally, with a collection of subsidiary documents relevant to the Charter, the series will end on the documentative note on which it has so pleasingly begun.

A. R. BLACKSHIELD*

Grundlagen und Grundfragen des Rechts. By Giorgio Del Vecchio. Göttingen: Vanderhook & Ruprecht, 1963. 306 pp.

This book contains a collection in the German language of seventeen essays published between 1923 and 1963 by one of the most distinguished and influential jurisprudential thinkers of today. Giorgio Del Vecchio, Professor Emeritus in Jurisprudence, and Dean Emeritus of the Faculty of Law of the University of Rome, is still, in his eighties, a productive writer. The

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present collection represents what is perhaps the most notable in his past and current publications on the foundations and the basic problems of law.

Since the book under review is a product of more than half a century of mature scholarly thought by a thinker of real stature, it is perhaps understandable that the present reviewers, separated as we are from the author by two and three generations, cannot help but feel some inhibitions in treating it in the same manner as we would when examining a work written by an author belonging to our own generations. Our overcoming of such inhibitions, and our resolve to give the present work no differential treatment results above all from the consideration that it is no homage paid to a Grand Old Man when unqualified praise is lavished on his work. Because of the manifest impossibility of assuming that no finite mind may err, or may have created at least an appearance of error when addressing itself to the problems of infinite scope which legal philosophy contains, abstention from challenge in a review of any jurisprudential work must reflect on the intellectual or moral qualities of the reviewer. At any rate, insofar as even his most recent works are concerned, Del Vecchio's writings continue to be provoking, inspiring, and productive of a spirit of controversy, so that their author cannot be treated as simply an old man, but rather as one who is still in his years of intellectual fulfilment.

To mention what the reviewers found in the present work to be important insights, well-expressed thoughts, or thought-provoking expositions, would make a long and monotonous list. These qualities are naturally to be expected from a thinker of Del Vecchio's stature, and thus we propose mainly to discuss some aspects of problems which are debated in current jurisprudential literature, and about which the author holds views which the reviewers cannot share or those to which we only subscribe with certain qualifications. Hence no attempt will here be made to dwell on those numerous ideas in the book under review with which we are in full agreement. We hope to be able to consider them in appropriate special works. On appropriate occasions we would like to take up in detail Del Vecchio's views on the imperative theory of law (140ff.), his remarks on the normative "openness" of legal systems (191), and his treatment of the relations between the individual and the State (237-265).

If there is any key word which opens the door to Giorgio Del Vecchio's thought, it is found in an abstract noun, in English to be rendered perhaps as "*inwardness*". At p. 43, the author mentions the stimulus which the famous saying of St. Augustine has provided for his thought: "*Noli foras ire, in te ipsum reddi, in interiore homine habitat veritas*" (quoting from *De vera religione*, C. xxxix). The manner in which Del Vecchio approaches all fundamental problems of law is essentially through reflection on that which the subjective glance of a thinker encounters. In this the author's thought parallels not only Fichtean kantianism but also modern Continental philosophical movements, notably phenomenology, personalism, and existentialism.

The reviewers readily appreciate the significance of "inwardness" in ethical thinking and attitudes. We agree with the author that "morals has its abode in conscience; it demands above all that the individual reflect upon himself" (54). Without a due emphasis on what Del Vecchio tries to convey by his idea of inwardness, ethical thought can end only in an impasse producing hollow echoes, or at best in glittering formulae which are devoid of any applicable content. For example, the Golden Rule and the Categorical Imperative are meaningless if they are understood primarily as laying down what men ought to do in relation to each other, and not primarily as calling them to certain beneficial internal dispositions such as empathy, detachment, inner deliberation, and communion with oneself (*cf.* 30).

Whilst going a long way with the author in his *noli foras ire* approach, the reviewers are somewhat reluctant to follow him to that point where he maintains that *through* inwardness men are enabled to grasp hold of an ethical *a priori*. For that which an inward-looking glance may apprehend is still an experience of a special kind, even though one of most fundamental import, which may supply us, for example, with criteria of justice applicable or worthy of application to our time and situation. Any rational endeavour in regard to these assumptions can only consist in seeking meaningful assent for them by means of "rhetorical" or "dialectic" reasoning. Any rational *demonstration* is inconceivable in this area. Even our most basic ethical assumptions remain subject to challenge. They cannot be *proved* to be tenable, but reasons may be advanced in the light of which they prove worthy of assent and of being acted upon.

Besides the Augustinian dictum which has been discussed above, there is another classical saying which has acted as a leitmotif for Del Vecchio's legal philosophy. This lies in the arresting utterance of Gian Battista Vico, according to which "This world of culture is certainly a work of man; consequently, its principles can and must be rediscovered in the dispositions of the human mind" (132, citing Vico, *Principii di scienza nuova d'intorno alla commune natura delle nazioni* (ed. Nicoli, Bari 1911), I, 172). The main role which this recurrent theme seems to play in Del Vecchio's thought is that of a reinforcement of inwardness as a philosophic approach. The present reviewers feel somewhat uneasy about the aptness of the thought which Vico's saying conveys. It does not strike us at all as an insight but only as a memorably framed half-truth. Granted (*per definitionem*) that culture is a human creation, it does not necessarily follow that its principles must be rediscovered in the "dispositions of the human mind". Such dispositions may be regarded only as generative of the objectivised content of cultural relations, but these nevertheless possess their own principles, which are independent of their genetic origin. Hence language and law, for example, however much these may be human creations, are no less mysterious than rocks and stars, which are not man-made. So that we may know them and understand their operation, principles other than those relating to their creation are of primary significance.

Vico's dictum perhaps obtains some semblance of weight on the ground of idealistic philosophy, according to which "reality is not 'outside' or 'before' the ego . . . but is a production or representation of the ego itself and . . . the laws of reality are nothing else but the laws of thinking" (27). Such a position is, however, untenable, and its weakness results from the confusion of reality with the conception of reality. On the same page as that on which Del Vecchio states this fallacious position, he detaches himself from it by rightly observing that "we must . . . assume an (objective) existence which embraces our own existence, consequently a reality which has its principle outside our person . . ." (27).

One of the central positions of Del Vecchio's legal philosophy is his assumption that there are "irrefutable principles" both in morals and in law, and, accordingly, "basic demands of justice which always remain the same". The author speaks of these as being "ethical axioms", and conceives of them as having "absolute validity" (58-59). Indeed, this position is so conspicuous in his writings that a very considerable part of his legal philosophy may be regarded as its inspired and inspiring, ingenious and fine elaboration. The present reviewers are unable to resist the attraction of the idealism contained in the ideas of Del Vecchio, and have no hesitation in declaring that they share what he is striving to convey by the above expressions. However, we feel, and regret, that the author has created the appearance of

underrating the significance of relativist, empiricist, positivist, and scepticist approaches to ethics in general and to the notion of justice in particular. If it is really the case that these approaches are an anathema for Del Vecchio, he must have only their crude expressions in mind.

In the reviewers' opinion, it is quite compatible with enlightened and refined relativism, empiricism, scepticism, and positivism that ethical principles exist which may be compellingly defended and, indeed, there are no tenable counter-arguments for their refutation in sight. But to declare these principles irrefutable, absolutely valid, or "axiomatic" is to go too far. We are compelled to accept them in a given historical situation, and this is surely sufficient for our profound dedication to them and for our *self-denying* involvement in assuring their effectiveness in social life. But if there is one thing which enlightened minds must preserve under all circumstances, it is a "critical unrest", evaluative non-attachment, and a refusal to become immersed in any cause whatsoever. This is what appears to constitute the core of relativist, scepticist, empiricist, and positivist conceptions of justice in their most distinguished exponents. They have not preached indolence of moral will, but openness of ethical discourse.

It might be thought that the abandonment of absolutist conceptions of ethics courts disaster because any other conceptions, however refined, would encourage fools, knaves, and rogues to irresponsible action. But absolutist conceptions in ethics do not necessarily bar evil consequences. For these conceptions, too, can be irresponsibly utilised by giving them distorted interpretations and invoking their emotive power in propaganda. In human affairs, nothing whatever appears to be exempt from abuse, mutilation, and contamination. There may be nothing wrong about what is asserted as being absolute moral principles: relativists, no less than absolutists, may give to them a whole-hearted assent. But there appears to be something deplorable in attaching absoluteness to these principles. This attachment seems to entail a *sacrificio dell'intelletto*, which we cannot afford if we wish to preserve the integrity and powers of the intellect in seeking, in understanding, and in defending what we cannot but accept whole-heartedly.

Although Del Vecchio is a lucid and illuminating writer, his thought is not always easy to follow. This is because, both as a legal philosopher and political thinker, he has addressed himself to problems which are intrinsically abstruse and whose proper analysis requires minds which are not only trained for intellectual fathoming but which also have the patience requisite for fundamental thinking. Thus his ideas are liable to be misunderstood, misconstrued, and misapplied. Whether we agree or disagree with the ideas of the author, for example, regarding the political organisation of the State and of the world, those who have ability and patience cannot fail to recognise their depth and their constructive value in the search for worthwhile and workable State and World orders. His ideas propounded before the Second World War relating to the legal and political organisation of the State are still worthy of attention because of the call of our time for radical, thoughtful, and careful revision of our received political ideas and ideals and institutions based thereon, if we are to seek, as we must, ways and means to achieve a durable and tranquil peace, and to secure survival and humane conditions of existence for all.

In concluding this review, we would like to take the opportunity of reporting a remark made towards the end of the Second World War to one of the present reviewers by Gustav Radbruch, the most distinguished exponent of relativism in legal philosophy in our time. When the master was asked what he thought of Del Vecchio's philosophy of the State he, Radbruch, said

that he would be happy to live in a State as envisioned by Del Vecchio, if it existed as contemplated. This shows that a relativist *par excellence*, too, may be in sympathy with the thought of an absolutist *par excellence*; and that what divides them is not the substance of thought and the ideals professed, but only, and mainly, the way in which the corresponding thoughts are expressed.

ILMAR TAMMELO* and LYNDALL L. TAMMELO†

Source Book of Family Law, by P. R. H. Webb, M.A., LL.B., Reader in Conflict of Laws in the University of Nottingham and H. K. Bevan, LL.B., Senior Lecturer in Law in the University of Hull. London, Butterworth & Co. Ltd., 1964. lii and 673 pp. (£5/13/0 in Australia).

One of the most obvious indications of healthy intellectual activity in English universities is the increasing number of publications emanating from the less famous universities—in this case Nottingham and Hull. The authors have produced a set of materials in family law which is doubly welcome because it not only meets a need but meets that need so successfully that it testifies to the author's care and scholarship.

Family law has been surprisingly neglected in the Australian universities. Generally they have offered a course in divorce but other aspects of family law have been sandwiched in courses on property or equity or ignored. This has had unfortunate consequences. The young solicitor often finds himself moving uncertainly in an unfamiliar maze of legislation and case law while he tries to relate the separate pieces of knowledge he has acquired. Indeed he can hardly be blamed because the law in this area has not developed in an orderly fashion. Piecemeal reforms, often initiated by persons trained in other disciplines and lacking legal training, have been the order of the day. Eventually Australian law schools will recognize their responsibilities to the community and the profession by placing more emphasis on family law. In the meantime there is hardly a more appropriate subject for a collection of statutory and case materials. The authors write, and we must agree, that it is rare that a student "familiarizes himself properly with the texts of the statutes during his course of study".[1] With such a disparate amount of material to be discussed a book such as this is needed to make the material accessible.

This "Source Book" contains both statutory and case materials supplemented by concise explanatory notes and a few problems. Approximately one-third of the materials are concerned with the annulment and dissolution of marriage but the materials extend to the custody, guardianship and adoption of children, property rights between husband and wife and the rights and liabilities of parents in relation to their children.

Unfortunately the variations between the statutory provisions in England and Australia limit the value of the book in Australia. This is particularly true of the chapter dealing with the matrimonial relief obtainable in magistrate's courts. This limitation, however, should not be exaggerated. There is a sufficient similarity between Australian and English law to make this book a worthwhile purchase pending the publication of an Australian equivalent.

What, if any, are the defects of the book? Frankly there are few significant

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[1] At v.