tion of rights of third parties who are adversely affected by some group activity. Although under Anglo-American legal systems the basic entity in any legal controversy is the individual, the law has provided means whereby other entities have been recognized as "adversary-entities" under our judicial procedures and their property treated as "object-entities". The author contemplates that just as the concept of the corporation sole was recognized by the common law and the corporation aggregate recognized by statute, so there is sound social justification for the further extension of this process to trust estates and unincorporated associations whether they exist for charitable or non-charitable purposes.

Despite the arguments so capably marshalled by Dr. Ford in support of this view it is hardly likely in view of Privy Council decisions to be accepted generally in common law fields in England and Australia without legislative intervention. Moreover, the extension in recent years of facilities for incorporation or registration of various forms of association by legislation relating to companies, co-operative and friendly societies, trade unions, industrial organizations, licensed clubs and the like must necessarily diminish the field in which the type of problem envisaged by the author is likely to arise. Finally, the wider resort to indemnity insurance whether by force of statute (e.g. motor vehicle, workers' compensation) or otherwise, tends to obscure the importance of joining the correct party as defendant in claims for tort and that that party is one who will satisfy any verdict obtained.

Even conceding all these matters, Dr. Ford's study is a most useful one and in point of detail probably the best so far done in this field.

R.E.M.*

The Public's Concern with the Fuel Minerals, by Maurice H. Merrill. St. Louis, Thomas Law Book Company, 1960. The Edward G. Donley Lectures for 1958, delivered in the College of Law, University of West Virginia. With an introduction by Roscoe Pound, xi and 128 pp.

A master of a field of knowledge who speaks thoughtfully about it, inevitably speaks somewhat of philosophy. And when his field is in the field of law, however technical and abstruse it be, and however modest his protestations, he inevitably speaks of jurisprudence. No one with even the vaguest notions of the checkered and tortuous growth of common law principles concerning ownership and extraction of oil, beginning with the simple doctrines that oil may be regarded as a kind of animal *ferae naturae*, reducible to ownership by capture, and that the remedy of an adjoining owner who thinks that oil is being drained from under his land is "Go thou and do likewise", to the good sense of "pro-ration", "pooling", "spacing" and "unitisation" of exploitation among landowners of a common field, would expect its exponents to speak jurisprudence. But when Maurice Merrill speaks of all this, his subject-matter becomes suddenly not just a struggle for the good oil and for the profit which flows with it, but a segment of our experience with the common law, and as such a meaningful segment of the life of western peoples.

Among the many themes of intense interest, his most outstanding is this, that even in a polity so wedded as is the United States to the principles of free enterprise, the story of oil, still barely a century old, is a story of how the growth of scientific knowledge has led to a steady modification of the public concern. The first American court to deal with oil, declared in 1854[1] that it was "a peculiar liquid not necessary nor indeed suitable for the common use

[1] *Hail* v. *Reid*, 15 B. Mon. 479 (Kentucky 1854).

* The Hon. Mr. Justice Else-Mitchell, of the Supreme Court of New South Wales.

of man". Then through many and very complicated phases of adjustment of the competing interests of landowners with mineral owners, of mineral owners drawing from the same field, of mineral owners with lessees, the law moved to its modern focus. This is undoubtedly, as the author points out and documents, a focus on "the wider issues of the new policy of conservation and the adjustment of these interests to it".[2]

The treatment of these developments, and of the very tangled case and statute law which they stimulated, is well designed to show "the interplay between human claims and legal norms, and the adjustment of judicial and legislative decision-making to the needs of the time and place".[3] The first Chapter, on "The Legal Foundation for Mineral Development", describes the doctrines of the common law which the law of minerals, and in particular the law of oil, took as points of departure. The second Chapter, on "Policing Matured Industries", directs itself to the first phase of legislative intervention, under the pressure of the interests of human beings not secured by the early judicial elaboration of the chosen doctrines. As Merrill nicely observes, "human beings . . . have the happy assurance that their needs and desires coincide with the immutable principles of natural justice", and "if these notions do not win favour with the courts they press upon the legislatures that it is imperative that there be a change in the laws".[4] The final Chapter surveys the problems of the contemporary period (embracing approximately the last fifty years) characterised by "the substitution of administrative rules and regulations and supervision, in place of the rules of the common law, or of statutory prescription enforced through litigation, as the means for achieving the objects of public concern".[5]

Roscoe Pound is correct, therefore, to observe in his Introduction, that "those of us whose reading must be in the direction of ideals and principles . . . will find in Professor Merrill's book not a little upon which those who pursue the science of law must reflect".[6] For so small a book, and one so easy to read, Professor Merrill's book is remarkably well-documented. Australian lawyers who have a specialised interest in the law of coal or a wishful interest in the law of oil or natural gas will find that the citations in the footnotes are adequate to lead them into the main approaches of the now well-worked-out law of the American States. The first two Chapters are concentrated naturally enough on coal and oil, but in the modern period the newer problems of natural gas receive prominent attention, including the fascinating problems of storage of natural gas, and of conflict between exploitation of the oil and the gas resources underlying the same land.[7]

The outstanding achievement of this small book is still that promised in the title, and fulfilled in its pages, and the balanced and informed thesis summarised in its final paragraph:

> The character of the public's concern with the fuel minerals changes with the times. How long these resources will be available to us is a matter of uncertainty. Our concern at the present seems directed less to the promotion of the rapid development of deposits and the determination of the relative positions of individual operators, landowners and workmen and more toward problems of production, of distribution and of conservation, of which large groups are the protagonists. The older problems still are in the background, but upon wise solution of the group problems depends the welfare of the individual members of society. We all must

[2] P. 101.

[3] P. 3, citing the relevant chapters of Julius Stone, *The Province and Function of Law*, cc. xx ff., for his opening theme.

[4] P. 35.

[5] P. 74.

[6] P. vii.

[7] Pp. 76ff., 93ff.

be concerned that judges, legislators, and the moulders of public opinion realise this, as they approach these questions.[8]

The writing of a book which is a *monumentum perennius aere* to its author, may also be a *monumentum paene perennius aere* for him in whose honour it is written. And the family of the late Edward G. Donley, lawyer and public man of West Virginia, whose memory is commemorated by these lectures at the College of Law, University of West Virginia, can be content that the purpose of the Foundation was fully achieved in 1958.

JULIUS STONE.*

Federal Jurisdiction in Australia, by Zelman Cowen, Professor of Public Law and Dean of the Faculty of Law in the University of Melbourne. Melbourne, The Oxford University Press, 1959. xv and 195 pp. with Table of Cases and Index. (£2/0/0 in Australia.)

This book is a specialised work not only in its over-all topic but also in each of its five chapters: accordingly, an analysis of its chapters will give some idea of the material to be found in the book.

The first chapter is concerned with the Original Jurisdiction of the High Court (seventy-three pages). After some preliminary criticism of the extent and the inter-relationship of subject matter in the Constitution ss.75, 76, there are a few pages on the High Court's concurrent original jurisdiction implemented under the Judiciary Act 1903-1959 (Cwlth.), s.30(c), and on its exclusive original jurisdiction under that Act, ss.38, 38A, 40A. Removal of causes, Judiciary Act, s.40, advisory opinions and sundry matters are dealt with before each of the nine sub-sections in the Constitution ss. 75, 76 are examined in turn. The chapter concludes with a discussion of the doctrine of *forum non conveniens.*

The second chapter considers Jurisdiction between Residents of Different States (twenty pages), namely, that part of the High Court's original jurisdiction conferred by the Constitution s.75(iv) which directly translates the United States Constitution Art. III, s.2. Again, the jurisdictional grant is criticised and contrasted with its American counterpart. The State courts' concurrent federal jurisdiction under the Judiciary Act, s.39(2), is noted; then, the bulk of the chapter is given over to an examination of the terms in s.75(iv) of the Constitution, *scl.*, "matters", "between", and "residents".

The third chapter is entitled "The Federal Courts" (twenty-three pages). The introductory remarks disclose the implied constitutional source of these courts (ss.71, 77(i), 77(ii)), the United States system of federal courts, the creation of the Federal Court of Bankruptcy (1930) by the Bankruptcy Act 1924-1959 (Cwlth.), s.18A, and the creation of the Commonwealth Industrial Court (1956) by the Conciliation and Arbitration Act 1904-1959 (Cwlth.), s.98, and the stillborn Federal Court of Claims (1947). The restrictions on the two extant federal courts are discussed: the requirement of life tenure under the Constitution s.72; the need for a separation of judicial from non-judicial powers; and the limited subject-matter under the Constitution ss.75, 76. Finally, the appellate jurisdiction of the two courts is considered.

The fourth chapter unravels the Territorial Courts and Jurisdiction with respect to the Territories (thirty-two pages). A possible source of authority for these courts is sought in the Constitution ss.71 and 77(i) along with s.76(ii)—the "law made by Parliament" being a law under s.122; the territories are meaningfully classified as internal and external; then, the whole problem underlying these courts is exposed: if such courts are not included in

[8] Pp. 104-105.

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