Introduction to Jurisprudence, by Dennis Lloyd, M.A., LL.D. (Cantab.), of the Inner Temple, Barrister-at-Law, Quain Professor of Jurisprudence in the University of London. London, Stevens & Sons Ltd., 1959. xxiii and 482 pp. (£3/3/0 in Australia).

It is easy for a critic to sound unkind. So let it be stated at the outset that this is a thoughtful collection of material in legal philosophy which achieves a considerable success in its aim—to provide a "reader" in jurisprudence which will permit a student to sample profitably the wisdom of selected legal philosophers in its original form.

In terms of arrangement the author travels from the general to the particular. The first two chapters concern the "Nature of Jurisprudence" and the "Meaning of Law". Thereafter we are introduced to representative writers grouped in various "schools" of jurisprudence—although the grouping is for didactic purposes only, as the author is anxious to avoid losing "the distinctive flavour of the particular writers it is sought to epitomise". Our journey concludes with a one-chapter consideration of the judicial process.

The first, and the most basic, criticism that can be levelled at this arrangement is that the baby is expected to learn tightrope tricks before he can walk. Legal philosophy becomes significant when it is related to legal practice. Until the judicial process has been considered any consideration of law at a higher level of abstraction can only proceed at a correspondingly lower level of perception. Of this type of legal philosophy one is tempted to repeat the words of Professor Llewellyn in another context:[1]

> If it is knowledge it is knowledge which rests on inadequate proof; if it is understanding it is understanding exceedingly difficult to communicate to one who lacks whatever peculiar intuitions have led to the understanding; if it is wisdom, it is wisdom not yet readily reducible to practical use.

It is delightfully simple to put the problem of the relationship between law and morality into a pigeon-hole if an intensive course in case analysis has not demonstrated that a lawyer is blind indeed if he does not see the problem. Every case that comes before a court involves some form of value judgment by the court—even if the court decides that there is no significant factor in the case before it which should lead to a result different from that reached in earlier cases—and one may seek information concerning the non-legal criteria to which the court referred in making that value judgment. It should be emphasized that this is not a criticism of the author's chapter on natural law. This criticism is levelled at an arrangement which invites the student to label and forget philosophers as though they were barely related to the brief on a barrister's desk.

Incidentally, while we are discussing arrangement, it seems odd that we are introduced to the "Sociological School" long before we meet the topic of "Custom and the Historical School" while it would have been convenient if the chapters on "Sovereignty and the Imperative Theory" and the "Pure Theory of Law" were consecutive rather than separate.

There is a temptation which besets every reviewer of a book of this character. Inevitably he would add material which the author had chosen to omit and if the proposed additions were multiplied by the number of reviewers the result would be a library, not a single book. Perhaps it is sufficient to note that the book does not attempt to cover all the topics generally comprehended within the term "jurisprudence". For instance, no attempt is made at analysis of legal concepts. Admittedly lawyers might be thoroughly bored with concepts such as legal personality and possession, but the law is rich in concepts which merit consideration in depth and there is ample scope for a selection of

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[1] K. N. Llewellyn "On the Complexity of Consideration: A Foreword" (1941) *41 Col. L.R.* 777.

materials illustrating the extent to which lawyers have remained masters of the abstractions they employ.

Again, the chapter on the judicial process is disappointing. The author's note on the topic of statutory construction is surprisingly superficial. The leading cases on statutory construction do *not* indicate that the courts choose the literal rule, or the golden rule, or the Rule in *Heydon's Case*, as the whim or fancy takes them. Of course there are poor decisions, but a consideration of the decisions in *In re Prince Blucher*,[2] *In re Allen Craig*[3] and *Newman* v. *Marrable*,[4] to take some typical illustrations, makes it obvious that the court's reasoning is tight and defensible. Generalisations about the "broad" and "literal" approaches tend to be facile generalisations made after a decision as to the scope of the legislation has been reached on much more precise considerations. The materials on "judge-made law" are inadequate for any discussion in depth and this results in the whole chapter on the judicial process being so restricted that it gives the process a misleadingly simple appearance. The book would be improved if the chapter were omitted and the space used to supplement the other chapters.

If we turn to the other chapters we find a refreshing width of reading in non-legal texts and periodicals. Admittedly these have been culled mainly from the fields of philosophy and political science and there are few extracts from the fields of economics, psychology or the social sciences in general. No doubt this reflects the author's interests and any criticism would be a counsel of perfection, but this collection does lose significantly in a comparison with Hall, or, the admittedly much larger, Simpson and Stone.[5] Perhaps the selection of materials is itself a commentary on trends in contemporary English legal philosophy.

It seems pointless to note omissions. The reviewer would have included passages by Hart, Stone and Radbruch, for example, but the selection must be a matter of personal choice and, providing the extracts raise the major issues for discussion, no adverse criticism can fairly be made. However the omission of Radbruch involves the omission of the most prominent exponent of relativism and the neglect of this important trend in legal philosophy is something which must be regretted.

Generally speaking, Lloyd's notes to the selections are concise, accurate and thoughtful. Of course a few sweeping statements are likely to be misleading. One example is the statement: "The somewhat crude psychology of the Utilitarians, though plausible to contemporaries, has long been jettisoned, as has the notion of utility as the philosophical justification of ethics."[6] While we must acknowledge that modern psychology has led to more sophisticated ideas of "pleasure" and "pain", some factors can be found which are common to both the utilitarians and certain modern writers on ethics. The basic problem with Lloyd's introductions arises from what is left unsaid rather than what is said. As standard texts are available to supplement the materials, introductions could be omitted. Anyway the materials should speak for themselves although a printer's error spoils the effect of Frank's derisive comment that writers on jurisprudence often forget "juriesprudence". The latter word is "corrected" in the text to "jurisprudence".[7]

Unfortunately, I have not had the opportunity to test this book as a collection of materials for class discussion. Without actual experience one can only guess at its effectiveness but probably it would be most effective within the

[2] (1931) 2 Ch. 70.
[3] (1934) 1 Ch. 483.
[4] (1931) 2 K.B. 297.
[5] Jerome Hall, *Readings in Jurisprudence* (1938); Simpson and Stone, *Law and Society* (3 vols.) (1949-50).
[6] At 113.
[7] At 215.

limits indicated. Certainly any teacher of jurisprudence who considers that his main object should be to encourage students to think rather than to learn is certain to welcome such a convenient and perceptive collection of materials.

D. J. MacDOUGALL.*

Cases on Private International Law (3 ed.) by J. H. C. Morris. Oxford, Oxford University Press, 1960, xxxiii and 513 pp. and Index. (£4/1/3 in Australia).

As it is now twenty-one years since the first edition of this work appeared, the author has been able to exercise his power to make a domicile of choice nor, contrary to the ordinary rule of English law, will his domicile or origin revive. By this is meant that, in 1939, a companionship with, if not a dependence on, *Cheshire*[1] was established. But the post-war resurrection of *Dicey*[2] changed all that, and a reviewer of the second edition of the casebook was able to declare[3] that Dr. Morris' *Cases* would ". . . on occasions make recourse to the last edition of *Dicey* unnecessary . . .". Since then another edition of *Dicey*[4] has appeared and this comment is just as much in point. One link with the past remains, however, one which some textual researcher in some future century may seize upon with eagerness, ignoring other signs of change. Dr. Morris is University Reader in Conflict of Laws, Dicey's work is also on Conflict of Laws, but both the *Cases* and Dr. Cheshire's work share the title Private International Law.

Yet the work in its present form is so much a companion to *Dicey* that it is questionable whether it can be used as a companion to any other work. Indeed, now that *Dicey* has grown to such a size many students will rely on the *Cases* alone. Nor need they feel unsafe in doing so. Not only does this latest edition contain well over a hundred cases, but also the Notes, twenty-three in all, are in most cases a careful précis (and often a word for word reproduction) of the corresponding passages in *Dicey*. Perhaps in later editions the work will be thrown off and the work may take on the title and the mantle of the "Student's Dicey"[5] which enjoyed a brief life some thirty years ago.

There are signs that this tendency may have been arrested in time; "straws" as Dr. Morris himself states, on another matter, "which show that a shift of wind may be in the offing". Thus one welcomes a paragraph which begins "Poor Mrs. Ogden! It is easy to sympathise with her matrimonial misfortunes" (92), even though one notices that her *cause célèbre* has escaped the bounds of the section on "Formalities" in the second edition and has now found a home under "Capacity to Marry". One welcomes the matrimonial adventures of Anna, Clara and Benito as illustrations of the Incidental Question;[5a] in other places, too, problems and questions are raised, though, on occasion, they are merely carried over from the Illustrations given in *Dicey*.[6]

On turning to the text one sees that a number of old favourites have gone and have been replaced sometimes by cases reported since the publication of the second edition and sometimes by those of an older vintage. Of course there comes a time when judicial decisions, and the academic topics concerned with them, lose their appeal and "go off", though, for some, age gives a special dignity in the same way as the money in one's pocket, if not overworn, may,

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[1] G. C. Cheshire, *Private International Law* (5 ed. 1957).

[2] A. Dicey, *Conflict of Laws* (6 ed. 1949, by J. H. C. Morris and others).

[3] (1952) 15 *Mod. L.R.* 401.

[4] 7 ed. 1958, by J. H. C. Morris and others.

[5] E. L. Burgin and E. G. Fletcher, *The Students' Conflict of Laws based on Dicey* (2 ed. 1934).

[5a] At 25.

[6] E.g. Note U "Some problems on wills" (435-6) owes very much to *Dicey* 601-23.