things to come, we conclude this review with two catalogues. One is the usual reviewer's collection of printer's errors — this time an even dozen, a surprisingly large number for the Oxford University Press. The other (offered not by way of criticism, but rather by way of challenge) is a random list of points at which the analyses offered seemed to this reviewer to fall short, or at least to have stopped short.

The printer's errors are on pages 16 (line 18, "no" for "not"), 20 ("Involunatry" in page head), 33 (full stop in second-last line), 35 (line 8, "crinimal"), 140 (lines 28, comma omitted, and 32, "prodecural"), 141 (line 13, "limitatian"), 162 (line 22, "by" for "be"), 197 (line 8, "not" for "nor"), 216 (footnote 2, wrong indicator), 221 (line 8, wrong type) and 228 (line 24, "and" for "an"). And the questions: why does Fitzgerald (pp. 3-4) accept so submissively the questionable distinction between acts and omissions; and how would he reconcile it with his enumeration (pp. 4-5) of cases where liability is incurred despite a *novus actus interveniens*? If, as he seems to suggest (p. 6), "act" *means* "voluntary act", why do all of us (including Fitzgerald himself) continue to feel the need of the phrases "voluntary act" and "involuntary act", when the latter would then be meaningless, and the former a mere tautology? Is Holmes' account of an "act" as easily dismissed as Fitzgerald makes out (pp. 6-9)? And what of Holmes' conclusion[11] that all acts *per se* are legally indifferent? It is obviously true that "stealing" and "murdering" are not legally indifferent, but Holmes is surely entitled to reply that this is because these words are *legal characterisations* of acts. Would the point be so clear as to "taking an article thitherto in the possession of another human being" or "killing another human being"? When, on the other hand, Hart (p. 40) makes a somewhat similar point in relation to "negligence" and "inadvertence", does he really manage to cut through the mass of indeterminacies which befog this distinction, or has he finally succeeded in saying only that "Inadvertence may be reprehensible in situations where it is reprehensible"? And finally, does it really remove the paradox from the self-justification of the rule in the *London Street Tramways Case*[12] to say with Simpson (p. 152) that the case can be meaningfully cited to show what the rule is?

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Current Law and Social Problems, edited by R. St. J. Macdonald for the Faculty of Law, University of Western Ontario. Vol. I (1960) 204 pp., and Vol. II (1961) 261 pp. ($5.50 and $6.50 respectively in Canada).

These two volumes, the first of a series to be published annually, present, in attractive hard-cover format, collections of essays on legal and meta-legal problems. The contents of the present harbinger-volumes are interesting and varied. Yet their very variety makes it sometimes difficult to see how a particular essay contributes to the overall purpose of the series — even though variety is of the essence of this purpose. The purpose is (we are told in an Introductory Statement in Volume I) "to promote collaboration between lawyers, social scientists, juristic philosophers, and others who are interested in exploring social values, processes, and institutions", "to invite discussion of contemporary problems by specialists in different fields whose research may be integrated to present broader aspects of those problems", and to serve as

[11] O. W. Holmes, *The Common Law* (1881) 54.
[12] *London Street Tramways Ltd.* v. *London County Council* (1898) A.C. 375.
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"a meeting ground for those concerned to foster understanding between law and related disciplines and to widen perspectives on topical legal matters".

The jurisprudential flavour of these objectives might lead one to expect that the performance will also lie mainly in the field of jurisprudence; but it is soon apparent that what is being *jurisprudentially offered* is in fact an approach to *law*. Since the main promise of collating interdisciplinary learning is as a basis for law-creation, the method is perhaps best suited to the comparatively unformed area of international law; and in fact, if these first two volumes show any overall predominant concern, it is in the international field. But problems of municipal law are also well in evidence. Each volume *begins* jurisprudentially, but then diverges into the variety of miscellaneous topics already hinted at, to which the interdisciplinary method is applied to varying degrees and with varying success.

Indeed, the essays so far presented suggest that there are inherent difficulties in making the interdisciplinary goal a reality, both because most of us can only write usefully about our own concerns (and where this is so we will be unwise to attempt more), and because even where a wider apparatus of knowledge is available to the writer, it is by no means an easy task to make it *useful* to the reader. What follows is a summary of the contents of the whole of the first two volumes. Criticism of the individual essays will be incidental, and kept to a minimum; the objective of the survey is to show that many essays simply do not attempt to fulfil the interdisciplinary aim, and that in those that do attempt it, success is by no means an automatic attendant on the attempt. It should perhaps be added that the present reviewer has the very greatest sympathy with the objectives as such. It need not be added, because it will become obvious in what follows, that if the essays are read without reference to these overall objectives, many of them are extremely useful and stimulating.

The first volume opens with the text of a lecture by J. P. Plamenatz of Oxford, "In What Sense is Freedom a Western Idea?" (Vol. I, pp. 3-18). The theme is that Afro-Asian nationals who reject western claims to superiority do so by appealing to western standards (pp. 6-7); but the technique adopted is that of the broad survey lit with useful insights—a splendid technique for a guest lecture but rather unsatisfying in a published article. And when Plamenatz frankly admits (p. 8) that he "cannot" test his thesis by a comparison of "western conceptions of freedom with those current in Asia or Africa before they were dominated or influenced by the West", he reduces the whole of his article to an *a priori* guess. No doubt his speculations extend into many disciplines, but they are *only* interdisciplinary *speculations*. The broad superficial survey, it appears, is not the way to useful collation of interdisciplinary information. And though such a survey may (and in this case does) give useful interdisciplinary *stimulus*, the stimulus is likely to be also superficial.

A more promising vehicle for the collation of multi-disciplinary knowledge is the Lasswell-McDougal "policy-oriented" approach; and many of the essays in these first two volumes are built to its specifications. D. M. Johnston's long essay on "The International Law of Fisheries", for example (Vol. I, pp. 19-67), inundates the reader with information from economics, biology, history, geography, and oceanography. By its own "policy-oriented" standards, it is excellent; and it is the kind of work that may tend to convince sceptics that the standards are worth having. If indeed we press beyond the surface masses of learning to ask stubbornly what the essay *says*, there is no clear answer; but what is clear is that anyone who does wish to say something about the international law of fisheries will be able to say it with much more assurance, and much more chance of relevance and reality, if he has Johnston's knowledge at his fingertips. It should be added that Johnston himself promises us such a sequel, for which the present essay is intended merely to lay the foundations.

Perhaps in the meantime more genuinely useful, though also more

narrowly "legal", is the essay on "International Copyright Control" by D. B. Sterling and W. J. Macleod (Vol. I, pp. 68-106). Even if this article were confined to its stated purpose—to consider Canada's place in international copyright arrangements—it would be of interest to the Australian lawyer as a glimpse of a history similar to his own (though not continued so late) of Dominion copyright law being tied to Imperial statute. But in fact the article ranges far beyond this into the whole tangle of conventions which govern international copyright, and any lawyer faced with the unenviable task of finding his way in this tangle will find the article an extremely useful guide.

The article by Kechin Wang on "The Residence of Companies in the British Income Tax Acts" (Vol. I, pp. 107-124) is more strictly "legal" still. Indeed it reads more like a chapter of a case book than an analytical article. Almost half the page span is devoted to an exposition of the judgments in the Australian *Koitaki Para Rubber Case*,[1] both before Dixon, J. (as he then was) and in the full High Court (which should not even in footnotes be referred to as "C.A."). The exposition is oddly marred by a misspelling of the name of Starke, J. (particularly unfortunate since his judgment is (as it were) a "pivot or axis" on which Dr. Wang's operations hinge). The article barely attempts discussion, doing little more than to supply the material on which a discussion might proceed. It is however offered only as a postscript to a more "discussive" article published in 1940 in the *Journal of Comparative Legislation and International Law*.

Earl Palmer's essay on "The Remedial Authority of Labour Arbitrators" (Vol. I, pp. 125-161) is one of the best in the two volumes. Aimed at building a "coherent, systematic philosophy of labour arbitration" (p. 125), it works almost exclusively from Canadian law and practice, but will be of the greatest interest to anyone concerned with fundamental thought about the desirable aims and methods of arbitration anywhere. And the conception of "a common law of the shop" (pp. 130ff.), here developed as a kind of microcosm of "*the* common law", will be of equal interest to anyone concerned with the nature, history, and validity-bases of the latter.

The first volume concludes (pp. 162-204) with an essay on "Narcotic Drug Addiction in Canada" by the editor, R. St. J. Macdonald. It is one of the most forceful and effective of the many essays in these two volumes which link the possible legal solutions with detailed probing of the factual ingredients in and affecting the problem to be solved. Macdonald stresses that he is writing for Canada, that Canadian "societal customs, traditions, moral standards, behaviour patterns, processes of disorganization and reorganization are not British, European, or, for that matter, entirely American, and that solutions developed in other lands will not necessarily or automatically work well in the context of our own society" (pp. 203-04). But he gives a careful summary of the competing approaches all the same, and at least for the purposes of orientation to a solution, his survey will be helpful for any country with a drug problem. In the second volume (pp. 243-262), he adds a postscript on "recent developments", notably the Canadian Narcotic Control Act, 1961.

The first 85 pages of Volume II are devoted to an essay on "Mental Incapacity in Criminal Law", by Helen Silving. This distinguished Kelsenite here shows all her master's clarity and infinite grasp of detail; but also much of his basic ambiguity and even sterility. This essay, indeed, focusses the main difficulty of the whole series perhaps better than any other in the two volumes. Professor Silving brings to bear on the problem of mental incapacity a vast and eclectic philosophical apparatus, and the reader who absorbs all the material offered to him will acquire a mass of wide wisdom and detailed

[1] (1940) 64 C.L.R. 241.

insights. But he will find it extremely difficult to sort out and assimilate the information that is really relevant to *legal* problems of incapacity. This is not to say that the information is not there: the final suggestions are genuinely constructive (not least because of the way in which psychological fact is wedded to democratic philosophy), and there are some very interesting sections on the historical and intellectual roots of the Anglo-American legal attitudes to insanity, supplemented by some fascinating Spanish materials (the author is Professor of Law at the University of Puerto Rico). We are suggesting only that interdisciplinary alloy is a difficult medium with which to construct legally relevant conclusions, and its successful use calls for massive patience and care, and ability to strain the mind to its limits so as to contain and balance the ingredients, on the part of the reader as well as the writer.

Most jurisprudents will find themselves on more familiar and therefore easier ground with M. R. MacGuigan's essay on "Positive Law and the Moral Law" (Vol. II, pp. 89-128), a full-bodied but straightforward exposition of Aquinas. It takes its place among a number of attempts in recent years to free this sensitive and flexible thinker from the straitjacket of "the Thomistic system". But one cannot help recalling that some of these attempts have been mutually self-defeating—we have had St. Thomas the empiricist, St. Thomas the existentialist, and even St. Thomas the philosophical sceptic—and the too obvious anxiety to give his writings a universal appeal has also sometimes been self-defeating. MacGuigan's presentation of St. Thomas as an exponent, and moderate advocate, of the creativeness of the judicial process is cogent, and itself moderate. And yet one wonders.

The remaining four essays in Volume II return to the preoccupation with international law which we noted at the outset. C. M. Schmitthoff (pp. 129-153) writes on the still-evolving subject of "International Business Law: A New Law Merchant". The main sources of this new law, he notes, are not "the usual statute or case materials", but "custom and practice" (p. 129). This makes the subject an important one: in all areas, academic thought about the law would benefit by more attention to the elements of custom and practice which in day-to-day life make up so much of what "law" means; and Schmitthoff's "international business law" is an excellent area in which to examine this kind of material. For similar reasons, it is an excellent topic for inclusion in the present series. Schmitthoff's essay, however, achieves little more than to draw attention to the emergence of this new area, and to hint at some interesting historical and jurisprudential speculations to which this phenomenon might prompt us. This is enough to make the essay stimulating and interesting; but it appears that for a detailed study of the new "law" and of the business routines which are shaping it, we must await the Report of the Colloquium on "The New Sources of the Law of International Trade" which was held by the International Association of Legal Science in September, 1962.

The purpose of Gerald F. Fitzgerald's essay on "The Development of International Liability Rules Governing Aerial Collisions" (pp. 154-176) is rather more limited, but soundly performed—the purpose being "to describe current efforts to unify substantive and procedural rules on aerial collisions and to view the latest drafts against the background of existing aviation conventions" (p. 154). Thomas M. Franck's attempt ("The Quest for Impartiality in Legal Systems" (pp. 177-193)) "to examine the emerging problem of maximizing the human impartiality of the international judiciary and administration in the light of . . . but one facet of the experience of the common law" (pp. 181, 193) is, as far as it goes, perhaps the best essay in the series: the breadth of the legal and cultural apparatus here brought to bear on "impartiality" is truly impressive. But for most of its length the essay proceeds as if it is leading into a much fuller analysis of the whole problem of impartiality; the restriction to "but one facet" of common law experience is announced at

the end, not at the beginning. And the result is that the end comes as a sudden, disappointing petering-out: it is a splendid performance, but it is only a part performance. We are returned to specific performance of the objectives of the series by A. A. Fatouros' survey (pp. 194-242) of "Obstacles to Private Foreign Investment in Underdeveloped Countries": the obstacles considered are social, ideological, economic and legal.

These, then, are the contents of the first two volumes of *Current Law and Social Problems*. Some of the essays are valiant and successful attempts to realize the series' lofty objectives; others are equally valiant, but less successful; and others again are merely legal or legal-philosophical exercises of the kind long familiar in legal periodicals. The inclusion of these last is, of course, a proper contribution to the editorial objectives. Lawyers engaged in interdisciplinary communication must give as well as take, and if this series is to be a true interdisciplinary forum, it is proper that we should use it for the public examination before other specialists of our own specialized problems and our own specialized cultural heritage. But the *typical* essays remain those which examine a specific legal problem in the light of a battery of diverse extra-legal materials. As to these, the Editor is to be particularly congratulated for providing ample space in which his authors can solve the problems of the interdisciplinary approach; but for all this, on the whole, the problems remain unsolved.

Yet we should not conclude that the problems *cannot* be solved. The 1962 volume (not available at this time of writing) is to have a new Editor, and this may perhaps be regretted; for Professor Macdonald has launched the series with both vigour and vision. But whereas the first two volumes (as is only to be expected at the start of a new series) offer only random collections of essays, the third is to be a *thematic* collection, devoted to legal and social problems of organised labour in Canada; and this, perhaps, is a step in the right direction. The limitation of the theme to a *Canadian* problem need not involve a similar limitation of the usefulness of the work; indeed, Australian lawyers who have read Mr. Palmer's essay in Volume I will find themselves looking forward to Volume III. As for the original interdisciplinary objectives, far from departing from them, the idea of thematic sets of essays may be the best way to fulfil them. For, on the whole, the conclusion to be regretfully drawn from a reading of the first two volumes is that unless we can all become *homines universales*, few single essays by single minds are likely to attain sufficient detail, sufficiently diverse expertise, or sufficient mental manipulability for the reader, to make the interdisciplinary approach a fruitful one.

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Justice According to the English Common Lawyers, by F. E. Dowrick. London, Butterworth & Co. Ltd., 1961. ix and 251 pp. (£2/12/6 in Australia.)

It is an idea of great *prima facie* attractiveness that the meaning of "justice" as a jurisprudential problem should be dealt with not by recourse to abstract philosophical theories, but by a careful piecemeal examination of what common law judges have said about justice in their occasional invocations of the concept. The use of judicial utterances seems attractive, first, because there are fair grounds for expecting that these will furnish the "typical utterances" about justice which we should be examining according to the canons of con-

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