court used it? It is significant that in *Niboyet v. Niboyet,*[6] Brett L.J., in a famous dissenting judgment arguing that an English court could only assume jurisdiction in divorce if it were the *forum domicilii,* did *not* rely on *Shaw v. Gould.* In *Le Mesurier v. Le Mesurier,* also heavily relied on by the Victorian court, *Shaw v. Gould* was carefully discussed. The Privy Council relied heavily on Lord Westbury in *Shaw v. Gould,* but went on to point out that in that case there was no clear *ratio* supporting the exclusive jurisdiction of the *forum domicilii.* I do not believe that the Victorian court's argument is sound on the basis of authority and the argument on principle seems to me to support *Travers v. Holley.* The Court of Appeal said that it was outrageous to adopt a 'holier than thou' attitude; and spelled out of *Le Mesurier* (reasonably, as Graveson and as I think) this proposition: that in general, as a matter of common law, jurisdiction is reserved to the *forum domicilii,* save where there are substantially common grounds of jurisdiction, other than domicile, in the jurisdictions involved. To be sure, difficult problems may arise in deciding whether there are substantially similar bases of jurisdiction,[7] but courts are adequately equipped to deal with such questions.

Graveson also discusses the Report of the Private International Law Committee on Domicile which was presented in 1954. He has also discussed this at length in an article in the *Law Quarterly Review.*[8] Over all, in the compass of a relatively small book there is a remarkable coverage. He includes a short discussion of the recognition of foreign acts of adoption, quasi-contract and torts committed in and from the air.

For any Australian, concerned to a large extent with intra-Australian problems of the conflict of laws, English doctrine and texts have a qualified usefulness. Perhaps because there has never been an Australian text on the conflict of laws, there has been too much of a tendency to rely on English authority and to assume, sometimes I believe wrongly, that the international rules are fully applicable to interstate problems. An Australian student studying any English text, should always remember this. But with this general warning, Graveson's *Conflict of Laws* can be recommended.

ZELMAN COWEN

Preface to Jurisprudence. Text and Cases, by ORVILL C. SNYDER. (The Bobbs-Merrill Company, Inc., Indianapolis, 1954.) pp. i-xxvi, 1-882. $10.00.

The development of the modern 'case-book' or book of materials collected for teaching purposes is one of the major achievements of American legal education. Perhaps because of the peculiar reluctance of American Law Schools generally to accept a course in jurisprudence as a necessary part of a future lawyer's education, the highest peaks of development in this regard have not been reached in books on jurisprudence, but on traditionally accepted divisions of the positive law—contracts, torts, equity, conflicts and so on. It may be partly that this unequal development has affected me in my reaction to books of materials prepared for jurisprudence courses, or it may be, as I think it is, that there is some-

[6] (1878) 4 P.D. 1.
[7] *Dunne v. Saban* [1955] P. 178.
[8] 'Reform of the Law of Domicile' (1954), 70 *Law Quarterly Review,* 492.

thing inherently different in the problems encountered in preparing such a book from those encountered in preparing a book on a case or statute law subject. In any case I have always looked with considerable doubt and suspicion on books of materials for the teaching of jurisprudence – even the best of them such as *Readings in Jurisprudence and Legal Philosophy* by Cohen and Cohen.

It has always seemed to me that the book which collects, chronologically and by subject, snippets from the great legal philosophers and jurists, from Plato and before through Holmes and beyond, is likely to be a snare for the teacher and a delusion for the student. Such books do less than justice to the authors they quote and, it seems to me, pay unwarranted deference to a 'case method' mystique which prohibits the use of a text-book. The purposes of the 'case method' are not served by substituting for a text-book a book which is made up of snippets from many texts.

Professor Fuller in his *The Problems of Jurisprudence*[1] has largely avoided that criticism and has produced a remarkably valuable teaching tool, but he does it by a process of compromise, and by selection of problems for study. Rigorous selection may be justified, perhaps necessary, in such a book and, if well done, is not a defect.

Professor Snyder, on the other hand, has compromised but not selected in the sense used. His method is, in each of the six parts of the book save the final part, to present chapters in which a brief and pithy text by the author is followed by edited case reports, and problems drawn from other materials, each with its questions and comments designed for class discussions. A form of completeness is achieved and the problem of selection is avoided by the author, limiting himself, quite deliberately and with expressed self-justification, to the sphere of analytical and particular jurisprudence.

In the Austinian tradition Professor Snyder, at the outset, marks out the limits to his study. 'Since also jurisprudence as philosophy of law begins where jurisprudence as science of law leaves off, knowledge, somewhat systematic and thorough, of the general principles of present-day state law, it seems pretty clear too, is needful, or at least helpful, before venturing upon what it ought to be and how it ought to work or what it means in the light of reality as a whole' (p. 68), says the author, and proceeds to organize and exemplify that knowledge in a 'somewhat systematic and thorough' manner. His work, expressly and by implication, rests on the work of the great analysts – Austin, Kocourek, Kelsen and Hohfeld – and he draws much on the works of Bryce, Holland, Holdsworth, Salmond, Allen and other English writers greatly affected by the neo-Austinian approach.

The basic structure described is to be applauded. The text provides a framework of thought and a classification of material which would serve to give students a feeling of confidence and certainty. The cases are well chosen and, so far as can be judged without checking the original reports, well edited; and they are ordered so as to focus attention on live legal issues. The notes and questions (which the author wisely does not attempt to answer) are tied to problems which are real and particular and not general and academic. Class discussion with this book as a tool could be both lively and profitable.

[1] Temporary Edition, The Foundation Press Inc., Brooklyn, 1949.

The book has been attacked by the natural lawyers.[2] The attack rests on two main grounds: firstly, that there is an over-preoccupation with positive law, and, secondly, that in so far as natural law is discussed the discussion is misconceived. As to the first ground the attack fails. The author deliberately limits himself to the study of positive law. Were his reasons merely those of space and primacy for law students he would be justified. The volume, as it is, exceeds 800 pages. If natural law and 'the integration of positive law with the social and rational sciences', were to receive fair treatment, several additional volumes would be required.

For the second ground there is more justification. The references to natural law theories are scanty and brief, and the vast learning that may be collected under that head is treated with little respect.

Accepting that this book is well designed for a course in analytical jurisprudence, the question arises whether such a course is sufficient.

Here the ever-present problems of time and space present themselves. The contents of this book provide more than enough for a full course. The addition of philosophical or sociological material would require the elimination of much of the analytical material included. And yet I am convinced that some adventures into the areas where positive law is related to and affected by other spheres of knowledge and enquiry are necessary. If this means, in Austinian terms, that we would be dealing with the 'science of legislation', then so be it. We must at least introduce our students to the kinds of problem involved, else, in a very real sense, their understanding of the positive law and the legal system will be inadequate.

That conviction does not imply that courses in jurisprudence should be turned into courses in general sociology. The student must be a competent lawyer before speculation is likely to be profitable. But some first steps into the wilderness must be taken at this time or for many, they will never be taken. It is not possible to advise where such a course is to stop if once the traditional English boundaries of analytical and historical teaching are overstepped. Each teacher must choose his points of excursion, and his own places to rest, knowing that he can never teach a course which does more than introduce some problems in legal philosophy or the sociology of law and that therefore he can never feel that his enterprise is completed or properly ordered.

The analyst may plead that to do his task properly a full course is required (as evidence – the book under review) and that there is no room for more. My answer would be that a jurisprudence course should be taken at or near the end of a law student's formal studies. By that time two, three or four years will have been devoted to positive law studies which, whether recognized as such or not, have been, to a considerable extent, devoted to analytical and particular jurisprudence. In these circumstances it is not too much to ask that jurisprudence as a formal analytical science should claim not more than half the time given to the course which bears that name, even if some failure to be complete is the price paid. In this respect I feel that Professor Lon Fuller at Harvard, in the book already referred to and in the other materials with which he furnishes his classes, is experimenting in the right direction.

One grave criticism must be made of Professor Snyder's book. In an attempt to reduce the text with which each chapter begins to the briefest

[2] See *e.g.* Brendan F. Brown (1955), 1 *The Catholic Lawyer*, 148, and J. P. Witherspoon Jr. (1956), 8 *Journal of Legal Education*, 520.

and pithiest form possible, he has developed a mode of expression which is irritating and clumsy and which lowers the standard of the whole work. Professor Snyder's text has most of the vices of bad English and few of the virtues of a brief note form, whereas he appears to have sought the virtues of both. Sentences like the following—'In the way defining this subject is gone about, a pattern is discernible; law of nature, i.e., laws such as those of physics, chemistry, and biology, is briefly discussed and it is indicated that this kind of law is not the subject; customs, conventions, and morality are distinguished from state law and the latter stated to be the subject' (p. 70),[3]—should not appear in a book produced for a learned profession.

DAVID P. DERHAM

The Rule against Perpetuities, by J. H. C. MORRIS and W. BARTON LEACH. (Stevens & Sons Ltd., London, 1956), pp. i-xlvii, 1-336. Australian price £3 16s. 6d.

For many years English lawyers have tacitly regarded Gray's *Rule against Perpetuities,* an American work, as the classic authority on its topic. The topic is such 'artificial reason' that understanding of any part of it is difficult without the aid of a work which aims at complete exposition as distinct from a mere collation of what has been decided. American treatise writing usually has the former characteristic due in some measure to an infusion of German scholastic tradition and to an attitude towards precedents for which the eulogistic word is 'flexible' and the dyslogistic, 'loose'.

Gray's work made no concessions to the relatively unitiated. This new book, the result of co-operation between an Englishman, Dr J. H. C. Morris of Magdalen College, Oxford, and editor of *Theobald on Wills,* and an American, Professor W. Barton Leach of Harvard Law School, provides a more readable introduction to the topic while having a range of content more sophisticated than that of a book intended for students alone.

The fact that the book is a joint Anglo-American venture has added to its quality. American interest in this part of the law is still strong. Many an American attorney is in the direct line of succession from Sir Orlando Bridgeman and other ministers to the ideal of dynastic ownership. In a land of great material wealth the urge to protect clients against the tax-gatherer has led to the development of property arrangements fully as complicated as those involved in the English procedure surrounding the strict settlement. Litigation about future interests is thus not uncommon and from the many American jurisdictions, where the doctrine of precedent is not too compelling, there emerge views on the rule against perpetuities so various as to stimulate a second look at many of the aspects of the rule as it is applied in common law jurisdictions of the British Commonwealth. The book is primarily addressed to British lawyers.

The book follows the admirably lucid form of the seven volume treatise *American Law of Property* to which Professor Leach contributed part 24 dealing with the rule against perpetuities. Readers familiar with Professor Leach's case-books will recognize his hand in the many beguiling footnotes bearing testimony to the fact that truth can be as evident in a smile as in a frown. The authors have set out to explain the rule with the main emphasis, 'not on history and logic', but on the way the rule

[3] *Supra,* quotation from p. 68.