but these examples demonstrate the author's critical approach. This is the first book which has ever summarized the Australian experience in the field of private international law, and for that reason alone is important. One is tempted to judge it as a book on Australian private international law, but that would be to misinterpret the scope of the work. Professor Cowen has covered all the important advances in the common law rules made by the Australian courts, and he has indicated the effects of Commonwealth law. There are other minor contributions made by Australian courts in various fields of private international law which he has not been able to fit in.

Two examples are cases on legitimation by statute, *Thompson v. Thompson*,[10] *In re Williams*[11]; and a series of recent cases (resulting from immigration to Australia) on the recognition and proof of ceremonies of foreign marriages. There is also a great deal of law on the operation and effect of the Service and Execution of Process Act which would be out of place in this comparative study. The book whets one's appetite for a book dealing with the whole field of Australian private international law with ample scope for full discussion of all the intriguing problems raised by Professor Cowen in his excellent work. In the meantime this book will answer many of the problems of the student of Australian private international law, and will provide a framework within which to tackle new problems as they arise, as well as a reference to comparable American experience.

The author has achieved his object admirably. Throughout the work he has compared the Australian law with the American. Anyone reading this book will feel that the Australian courts have not yet fully grasped the fact that interstate private international law problems must often be dealt with differently from international ones. In particular the reader will appreciate that full faith and credit has yet to be given its full application in Australia. This book will help towards a greater understanding of interstate problems of private international law in Australia.

HADDON STOREY*

Unincorporated Non-Profit Associations, by HAROLD A. J. FORD, S.J.D. (Harvard), LL.M. (Melb.), Reader in Law in the University of Melbourne. (Oxford University Press, 1959), pp. i-xxii, 1-151. Price £2 6s. 6d.

This monograph, which was originally written as part of the author's work for his S.J.D. degree at Harvard, packs a remarkable quantity of material, upon one of the most difficult subjects available for this kind of treatment, into the short space of one hundred and fifty pages. The work is divided into two parts, the first dealing with dispositions of property to associations, while the second, and longer, part deals with their liability.

The associations involved are of various kinds, and include clubs, unincorporated trade unions, mutual benefit societies, non-charitable welfare organizations, lodges and the like. The significance of the term 'non-profit' in the title of the work, is that commercial partnerships, being otherwise catered for, do not fall within the author's purview.

There are, of course, other aspects of non-profit associations which are significant for legal theory, but the two aspects chosen by Dr Ford for examination have been selected by him for the opportunity they offer to

[10] (1951) 51 S.R. (N.S.W.) 102. [11] [1936] V.L.R. 223. * LL.M., Barrister-at-Law.

develop a thesis common to both, namely, that it is the purpose of the association, and not the aggregation of individual citizens who constitute its membership, which is, or should be, the real object of the law's attention. The expression 'is, or should be' is here used because, in a subject like this, and in a work whose sources are drawn from England, Australia, Canada, the United States and New Zealand, the author is sometimes dealing with established doctrine and sometimes with theory not supported by, and indeed often denied by, the cases, and what is established doctrine in one jurisdiction may be heresy in another. The author recognizes that English judicial theory tends to favour the view that associations of the kind here dealt with are no more than collections of individuals whose relations *inter se* and with the world at large are governed by ordinary principles relating to contracts, torts, agency and trusts. But he produces an impressive body of authority to support the view that the law is moving towards recognition of the association as a legal entity (though not a legal person) differentiated from its members and subject to distinct liabilities in respect of the common fund or other property held for the purpose of the association. Just as the growth of trade unions stimulated the law of conspiracy, so the idea that an association is merely an aggregation of individuals, which proved adequate for members' clubs (but subject to the protection afforded to the members by *Wise's Case*[1]) was modified to cope with the new situations to which the legalization of trade unions by the Acts of 1871 and 1876 gave rise. As Dr Ford points out, since the decision in *Bonsor v. Musicians' Union*[2] there is much to be said for the view that the liability of the funds of a trade union to satisfy a judgment depends, not on the Acts having created a new legal entity, but on the recognition of the association as an entity independently of the legislation, which did no more than provide statutory authority for an action against the Union in its registered name. If this be so, he says, the funds of other associations should logically be available in the same way, to satisfy liabilities, not of the members constituting the association, but of the association considered as an entity existing for the accomplishment of a purpose. In this connection, the author refers at page 122 to the provisions of the South Australian and Tasmanian Rules of Court, which on one view might be said to proceed on the assumption that liabilities of the association, to be satisfied out of the common property, can exist separately from the liabilities of individual members. The alternative view is that the rules have no substantive effect and merely provide a convenient procedure to avoid, in the first instance, joinder of numerous individual members. Some light may be thrown on this question by the decision in the *Hursey Case*, now under reservation by the High Court, in which the Tasmanian rules were amongst the many topics discussed in argument.

It would be wrong to criticize this excellent book for possessing the characteristics which are inherent in its origins, but a reviewer should mention them for the guidance of the prospective reader. In the first place, the work is more concise than one would prefer. Whether because of limitations of size, or merely from having worked in an American law school, the verbiage is at times oppressive. For example, the use of the phrases 'particular transaction authority' and 'management authority' to contrast authority given specifically to enter into a particular transaction, and authority conferred in general terms to a person or committee

[1] [1903] A.C. 139. [2] [1956] A.C. 104.

having powers of management, is undoubtedly a convenient form of shorthand, but it makes for difficult reading. In the second place, American authorities naturally occupy a more prominent place than in a work written primarily for an English or Australian public, and the discussion of them sometimes assumes a familiarity with American institutions which may not be shared by the normal Australian reader. This is perhaps inevitable. The range of authorities dealt with also has the result, again unavoidable having regard to the nature of the work, that it is difficult to gain a clear impression as to the extent to which the adoption of a particular point of view is precluded by authority binding on an English or Australian Court. Such an enquiry is much less important in the United States, where precedent has less force in the Courts, since there is so much persuasive, and so little binding, authority, and still less force in the law schools, where 'American law' is taught to students from all over the United States and beyond. The broad approach so adopted means that precedents are not so much limiting factors as illustrations of the way in which legal ideas develop, and indeed the great merit of this book is that it points the way to a development of the law which will recognize the reality of the purposes of an association as giving rise to a separate 'object-entity' distinct from the individual citizens who constitute the membership of the association.

If one may make some minor criticisms, the case of *Cameron v. Hogan*[3] is cited only once (at page 24) and then for a proposition for which it does not seem to be authority. In that case it was held that in the case of a political party no member has a sufficient interest in the application of the funds to entitle him to a remedy for wrongful expulsion. It was suggested that the rules of the party did not create legal relationships at all, and it may well follow that neither civil nor criminal remedies are available in respect of misapplication of the funds of a political party. At all events, it does not appear to support the proposition that any member of a non-charitable association can ask the Court to enforce devotion of the association's property in accordance with the constitution of the association, though some of the cases there cited would support the proposition for some kinds of non-political associations. On the other hand, *Cameron v. Hogan*[4] is one of the leading Australian authorities on the rights of members of such associations to sue their fellow members, and would perhaps have merited some discussion in that context (pages 129-135).

On page 85 it is suggested that the Court in *Hollman v. Pullin*[5] took the view that a person who contracts on behalf of an association which has no legal existence, would not normally be personally liable. *Kelner v. Baxter*,[6] which would support the view that in such a case the contract ought if possible to be given some effect, for example, by treating the 'agent' as a principal, might usefully have been cited here.

Finally, on page 109, the author, after discussing some problems not adverted to in a case cited, remarks that '. . . the apparent lack of concern on these matters betokens a view that the class action had provided a means whereby a stranger could visit liability on an association's common fund.' A more realistic view of the judgment would be to infer that the court overlooked the necessity for resolving these problems, rather than that it had any conscious view of the law which would make their solution

[3] (1934) 51 C.L.R. 358.
[4] *Ibid.*
[5] (1884) 1 Cab. & El. 254.
[6] (1866) L.R. 2 C.P. 174.

unnecessary. Again, however, it is only fair to point out that progress in the development of legal theory depends largely upon analysis of the unspoken assumptions which lie behind decisions. These assumptions often represent the first breach in the wall of precedent, and the author is justified in proceeding on the basis that if a proposition is assumed without discussion the case can be treated as an authority for the correctness of the assumption. Indeed, in various places throughout the book the reader will feel that the authorities are made to do duty of which those who decided them had no conscious thought. This is true to some extent of the whole system of precedent, but particularly so in this difficult field, in which it must be rare to find that the judge who decides the case is expert.

Dr Ford has produced a first-class work. His analysis is penetrating, he has covered an enormous range in a short compass, and his book should have an important influence on the development of the law relating to associations.

R. M. EGGLESTON*

Alexander Maconochie of Norfolk Island, by THE HON. MR JUSTICE J. V. BARRY. (Oxford University Press, Melbourne, 1958), pp. i-xxi, 1-277. Price £2 10s.

Mr Justice Barry's biography of Alexander Maconochie is an important study in three branches of knowledge. It is a definitive biography of one of the greatest of penal reformers; it is an intriguing study in Australian history; and it is a major contribution to the theory of the treatment of criminals.

Maconochie's revolutionary belief was that it would be desirable to use the time a criminal spent in prison to try to reform him by helping him to develop a sense of social responsibility; the alternative belief, almost universally accepted in the first half of the nineteenth century and still not moribund, is that prison should be a place of terror which would serve as a constant warning to the potential criminal and in which the convicted criminal should so suffer that he would determine not to return. There is no prison administration that does not today accept the reformatory idea for most prisoners; there was none that did accept it when, in 1840, Maconochie became Governor of the hell on earth that was the Norfolk Island penal settlement.

Prison as a place of punishment, and not merely as a place where men are awaiting trial or punishment, seems to have had its first trial in the Walnut Street Gaol in Philadelphia in the last decade of the 18th Century. Its precursors were banishment and transportation. Maconochie was led to an interest in prisons through being requested to study transportation. The London Society for the Improvement of Prison Discipline asked him, when he was leaving for Van Diemen's Land as Private Secretary to the Lieutenant-Governor, Sir John Franklin, to prepare a report on the working of the convict system. This undertaking, when allied with his own integrity, originality of mind and compassion, made of him a dedicated man, a major contributor to knowledge in the social sciences, and, incidentally, a persistent nuisance to his superior officers in the Government of Van Diemen's Land, New South Wales and England.

In 1840 Maconochie was given the chance, as Governor of the Penal Settlement on Norfolk Island, to apply some, but by no means all, of the

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