

crime (one such photograph is reproduced opposite p. 404 of the book), and the use of similar fact evidence in the trial.

The final, and by far the longest, chapter in this casebook is devoted to an attempt to enunciate some of the principles on which courts act in fixing sentences. There used to be judges, so it is said, who absolved themselves from all interest in penology or related fields on the ground that sentencing was an art not a science, whatever that was supposed to mean. Nowadays, sentencing is no longer an art but neither is it yet a science. It is an emergent branch of the law whose principles are still ill-defined. Friedland's selection and balancing of cases and materials on sentencing provide an excellent demonstration of the confusion extant in this field of criminal law. A strong warning is given that the language of therapy is sometimes employed to disguise the true state of affairs prevailing in custodial institutions and at other points in the correctional process. For instance, the Canadian version of the notorious 'sexual psychopath laws' is pointed to as a situation in which laws have been supported as therapeutic in nature when in fact such a characterization is of highly doubtful validity. Fortunately this type of legislation has never really gained a foothold in Australia although it has not been without its advocates (*vide* Barry, Paton and Sawyer, *Introduction to the Criminal Law in Australia* (1948) 113-15). Even in Canada it has proved to be a failure (*Friedland* 536-52). The legislation allowed for the indeterminate detention of 'criminal sexual psychopaths' but the demonstrated flaw in this form of sanction was that the term 'psychopath', though given legal definition, was of no precise clinical meaning to psychiatrists and psychologists on whom the courts largely relied for expert advice. The law also failed to serve its purpose because of a proper reluctance by the courts to commit a person to indeterminate detention when it was known that the offender so detained would be subject to no different custodial or treatment facilities than provided for prisoners serving determinate sentences. The cases and materials presented by Friedland on this subject constitute, in themselves, an indictment of the whole concept of indeterminate detention for treatment of the so called 'sexual psychopath' or 'dangerous sexual offender'.

There remains one final observation to be made on this book: the work contains a table of cases, but no table of statutes nor a general index. It would be a cardinal sin for any law text of 568 pages to be published without an index; and although the need for a general index in a casebook may not be as compelling as in a text, the lack of an index in this book merits criticism. Not only does it hamper the readers' access to the considerable amount of material other than case law included in the book but also it limits the effective use which can be made of the case law itself. One hopes that when this otherwise commendable book reaches its second edition, as it no doubt will, this defect will be remedied.

RICHARD FOX*

Essays in Legal Philosophy, selected and edited by ROBERT S. SUMMERS, Professor of Law, University of Oregon School of Law. (Basil Blackwell, Oxford, 1968), pp. i-viii, 1-307. United Kingdom Price: 45s sterling.

Legal philosophy, as Professor Summers (the editor of this collection of essays) points out in his introduction, has in one form or another flourished since at least the time of Plato. In the early part of the nineteenth century it was, in the English-speaking world, given a specific form and direction by John Austin which proved unfortunate. Jurisprudence came to be thought of exclusively in the way in which Austin had dealt with it. That way came to appear largely irrelevant from the practising lawyer's viewpoint, with the result that towards the end of the century Professor Dicey was able, quite accurately, to remark that 'jurisprudence stinks in the nostrils of every practising barrister'. Slowly but surely, however, other ways of discussing jurisprudential matters came to the fore, and, as they became generally known, produced both excitement and results. Perhaps Roscoe Pound could claim the major share of the credit for this change in attitude.

Since the end of World War II there has been an uprush of interest in jurispru-

* LL.M. (Melb.), Dip.Crim.; Barrister and Solicitor of the Supreme Court of Victoria; Senior Tutor in Law in the University of Melbourne.

dential matters resulting, no doubt, from the practical problems which the present era of rapid social change forces us to grapple with. The evils of the Nazi era have impelled us to reconsider the complete divorce between law and morality which Austin appeared to have promulgated. Changing attitudes on questions of sexual morals have led to another major controversy dealing with the same problem from a somewhat different angle. In these discussions jurisprudence has, as always in the past, leaned heavily on the work of contemporary philosophers. And so the careful analysis of language which has formed the major part of English philosophic writing in recent years has received in this latter period a specific jurisprudential application.

In this collection of essays Professor Summers has brought together a number of examples of this type of jurisprudential investigation. All of the essays have already appeared elsewhere, but in journals which are not readily accessible outside university libraries. It is thus extremely useful to have these pieces brought together and published in a form which makes them readily available to any lawyer who is concerned with his place in society and looks beyond the daily task of earning a living by advising clients. Professor Summers has himself contributed a brief introduction outlining the philosophical approach which is common to all the writers represented.

The ten essays in this collection are divided into two sets, the first five discussing legal concepts. In this section Professor Ronald Dworkin asks whether we can really consider law as nothing more than a system of rules. Dr Honoré re-examines the concept of social justice, Professor Herbert Morris investigates the claim that law is concerned with external conduct and morality with internal conduct, Professor Glanville Williams discusses the concept of legal liberty and Dr Kenny the problems of intention and purpose in law.

The second set of five essays has the common theme of asking what is the rational justification for dealing with particular problems in specific ways. Dr Lucas discusses various processes for resolving disputes, Professor Graham Hughes analyses and refutes the thesis concerning morality and law advanced by Lord Devlin, Professor Golding discusses the justification of constitutional decision in the United States Supreme Court, Professor McCallum examines the value of considering legislative intent when interpreting statutes, and Professor Wasserstrom asks to what extent one is justified in disobeying the law.

This account of the scope of the collection suffices to show its broad range and depth of interest. The problems discussed are of vital concern to every lawyer today. He cannot avoid holding some philosophy with regard to them even though he may be unconscious that he holds it. And a volume such as this, which brings out clearly the implications in the different views held on each of the problems, cannot fail to be of value.

Inevitably, one has one's own preferences for particular discussions and treatments. In my opinion, every one of these essays is worth reading, but I would single out for especial commendation the contributions by Professor Dworkin, Dr Lucas, Professor Hughes and Professor Wasserstrom. Each of them is a splendid discussion which of itself would justify an investment in the whole collection. But I do not wish to imply that the other essays can be disregarded. My particular preferences for these four probably reflects no more than the fact that I found these four topics more relevant to the problems which are currently attracting my attention than the other six, but other readers with different interests could and probably would take a quite different view.

In conclusion, I would stress once again that this is an excellent collection, and warmly recommend it as a book that should form part of the library of every contemporary lawyer.

P. BRETT*

Australian Divorce Law and Practice, by PAUL TOOSE, C.B.E., LL.B., One of Her Majesty's Counsel for the States of New South Wales and Victoria, RAY WATSON, B.A., LL.B., One of Her Majesty's Counsel for the State of New South Wales, and a member of the Bars of Victoria and Papua-New Guinea, and DAVID BENJAFIELD, LL.B. (Sydney), D.Phil.

* LL.B. (Lond.), LL.M. (W. Aust.), S.J.D. (Harv.); Barrister-at-Law; Professor of Jurisprudence in the University of Melbourne.