and the fact that such sanctions require serious consideration of the rights of victims. There is room for very serious inquiry into "an evaluation in terms of the deterrent and reformative potentialities and the requirements of restitution".[13]

There are young men in this community who, if instead of getting three or six months imprisonment for illegally using a car, might have been much more effectively dealt with if they had had to pay by instalments the total cost of the damage to the car, plus the cost of recovering it, plus the cost of the prosecution, plus interest on the unpaid amount. When the first gaol sentence looms up relatives will often do anything to avoid it for the offender. To have the intra-social and intra-family pressure of a bond which relatives have to meet, if the young man does not, means that someone within the family group has to lose £3 a week from their wages for two or three years. This could operate as a much sharper deterrent than a short period in gaol, and would make the offender pay for what he has done, and stop him boasting around his own narrow world that gaol is easy, and that (as the phrase is) "I did it on my head".

J. G. McCLEMENS*

Unincorporated Non-Profit Associations: Their Property and their Liability, by Harold A. J. Ford, S.J.D. (Harvard), LL.M. (Melbourne), Reader in Law in the University of Melbourne. Oxford, Oxford University Press, 1959. xii and 145 pp. and Index. (£2/6/6 in Australia).

The unincorporated association has always been regarded as something of an orphan in English legal thinking and the difficulties of explaining its origin and legal qualities have been met by resort to the principles of co-ownership and the doctrines of agency. These explanations, as Dr. Ford points out, have neither been entirely successful nor logical, but they have become fairly well established in our jurisprudence.

At root the development of the law respecting the property of unincorporated associations and the rights of members along these lines is traceable to the theory that it would be an infringement of the Royal prerogative for an association or body of individuals not incorporated by Royal Charter to have any status as a juristic entity. With the wide legislative provisions which facilitate incorporation of associations of various kinds this policy is no longer relevant but its influence on the law remains. Moreover, neither that policy nor any present policy of the law can have any real bearing on the determination of the nature and extent of the rights of strangers who are harmed by the group activity; the extent to which there is any theory of liability for such activity is declared by the author to be the aim of the book.

The scope of the work is much wider than this stated aim would suggest. Part I is devoted to an examination of the effect of dispositions of property to or for the benefit of associations. The problems which have arisen in this field in Anglo-American experience are discussed in detail; they stem in the main from the conveyancing difficulties which the common law created and, although the theory of trust was availed of to mollify the common law, the rule against perpetuities often produced the consequence of invalidity and frustrated a testator's or grantor's intention.

Dr. Ford has attempted to show that the decisions and *dicta* open a path to the conclusion that every disposition to an association should be taken to operate as a trust for a purpose. This conclusion which provides the basis for

[13] At 125, quoting from (1939) 39 *Columbia Law Rev.* at 1187.

* The Hon. Mr. Justice McClemens, of the Supreme Court of New South Wales.

an examination of liability for harm caused by group activity would also solve difficulties arising from the rule against perpetuities. Unfortunately, however, in the interim between the completion of the manuscript of this work and its publication, the Privy Council seems to have closed this path[1] and in doing so has relied on *dicta* in the speeches of the Law Lords in an unreported decision in the House of Lords[2] which it regarded "as of paramount authority". The rejection by the Privy Council of the notion of trust for a purpose is to be found in the reasons delivered by Viscount Simonds[3] and although limited to testamentary gifts there seems no doubt that this rejection must apply equally, if not with greater force, to grants *inter vivos*.

Although the basis of the author's approach to the specific problems posed by him for examination has been substantially destroyed, the remainder of the book (Part II) is by no means without interest. It contains an examination of decisions in Anglo-American law in which the rights of strangers to the association compact and of the rights of members and committee members *inter se* have been considered and characterized. Not the least of these is the right known to agency law of indemnification of an agent by his principal, a right which has not been similarly recognized in the field of trust. The availability of indemnity actions against members as a means of giving effect to a doctrine of group liability of an unincorporated association is, as the author concedes, seriously impeded by the decision in *Wise* v. *Perpetual Trustee Co. Ltd.*[4] though that decision is open to criticism on at least one important respect.

In the examination of the position of the injured stranger, Dr. Ford shows that some recent judgments have come closely to the recognition of unincorporated group liability. This is perhaps best illustrated by *Bradley Egg Farm Ltd.* v. *Clifford*[5] in which differing views of the effect of a contract made by the manager of a society were taken by members of the Court of Appeal; of such diverse views as were expressed in this case and even more widely in American authorities, the author says:

> Where a stranger has in an attempted contract with a supposed agent of an association failed to secure the liability of anyone to him on any of the foregoing bases, any condemnation of the law's failure to assist him may be tempered by the reflection that in the negotiation normally associated with contracts concerning associations the stranger has his opportunity to withdraw. But where the transaction involving a stranger is a tort it is not appropriate to say that strangers dealing with associations should be expected to show a high degree of care for their own affairs.

To some extent, however, steps have been taken by resort to the procedure of class actions to make the common fund available to satisfy the judgment of an injured plaintiff. The instances where this has occurred have been rather haphazard and it is proper to say that there is no accepted theory that the rules as to parties which were introduced by the Judicature Act make it possible to enforce a judgment arising out of a group activity against the common fund or members of the group personally. That course can be taken under legislative provisions which authorize action against an officer of the association or which, like the English Trade Union Acts, provide for registration for limited purposes including the facilitation of legal proceedings, but the problem in such cases will be the construction and application of the statute in question.

The juristic significance of various aspects of the question discussed by Dr. Ford in this work is to be seen in the necessity for the "entification" of the unincorporated association for the purpose of property and civil rights and remedies and, more particularly, for the purpose of the assertion and satisfac-

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[1] *Leahy* v. *Attorney-General of N.S.W.* (1959) A.C. 457.
[2] *Re Macauley's Estate*, noted (1943) Ch. 435.
[3] (1959) A.C. at 484.
[4] (1903) A.C. 139.
[5] (1943) 2 All E.R. 378.

tion of rights of third parties who are adversely affected by some group activity. Although under Anglo-American legal systems the basic entity in any legal controversy is the individual, the law has provided means whereby other entities have been recognized as "adversary-entities" under our judicial procedures and their property treated as "object-entities". The author contemplates that just as the concept of the corporation sole was recognized by the common law and the corporation aggregate recognized by statute, so there is sound social justification for the further extension of this process to trust estates and unincorporated associations whether they exist for charitable or non-charitable purposes.

Despite the arguments so capably marshalled by Dr. Ford in support of this view it is hardly likely in view of Privy Council decisions to be accepted generally in common law fields in England and Australia without legislative intervention. Moreover, the extension in recent years of facilities for incorporation or registration of various forms of association by legislation relating to companies, co-operative and friendly societies, trade unions, industrial organizations, licensed clubs and the like must necessarily diminish the field in which the type of problem envisaged by the author is likely to arise. Finally, the wider resort to indemnity insurance whether by force of statute (e.g. motor vehicle, workers' compensation) or otherwise, tends to obscure the importance of joining the correct party as defendant in claims for tort and that that party is one who will satisfy any verdict obtained.

Even conceding all these matters, Dr. Ford's study is a most useful one and in point of detail probably the best so far done in this field.

R.E.M.*

The Public's Concern with the Fuel Minerals, by Maurice H. Merrill. St. Louis, Thomas Law Book Company, 1960. The Edward G. Donley Lectures for 1958, delivered in the College of Law, University of West Virginia. With an introduction by Roscoe Pound, xi and 128 pp.

A master of a field of knowledge who speaks thoughtfully about it, inevitably speaks somewhat of philosophy. And when his field is in the field of law, however technical and abstruse it be, and however modest his protestations, he inevitably speaks of jurisprudence. No one with even the vaguest notions of the checkered and tortuous growth of common law principles concerning ownership and extraction of oil, beginning with the simple doctrines that oil may be regarded as a kind of animal *ferae naturae*, reducible to ownership by capture, and that the remedy of an adjoining owner who thinks that oil is being drained from under his land is "Go thou and do likewise", to the good sense of "pro-ration", "pooling", "spacing" and "unitisation" of exploitation among landowners of a common field, would expect its exponents to speak jurisprudence. But when Maurice Merrill speaks of all this, his subject-matter becomes suddenly not just a struggle for the good oil and for the profit which flows with it, but a segment of our experience with the common law, and as such a meaningful segment of the life of western peoples.

Among the many themes of intense interest, his most outstanding is this, that even in a polity so wedded as is the United States to the principles of free enterprise, the story of oil, still barely a century old, is a story of how the growth of scientific knowledge has led to a steady modification of the public concern. The first American court to deal with oil, declared in 1854[1] that it was "a peculiar liquid not necessary nor indeed suitable for the common use

[1] *Hail* v. *Reid*, 15 B. Mon. 479 (Kentucky 1854).

* The Hon. Mr. Justice Else-Mitchell, of the Supreme Court of New South Wales.