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.

'functions in its modern environment and fulfils the needs of modern society' (p. v). By the rule against perpetuities the authors mean primarily the rule against remoteness of vesting. They recognize the policy relationship of this rule with the doctrine striking down attempts by disponors to impose direct restraints on alienation (p. 315), but that doctrine is outside their treatment. They recognize also another doctrine concerned with the duration of non-charitable purpose trusts to which they devote chapter 12.

Dealing with the rule against remoteness of vesting the authors provide a clear explanation and many critical but constructive comments. Their standing to make these comments is supported by the broad comparison of many decisions from British and American jurisdictions with which the work abounds. The format of the work acknowledges the greater force of precedent in British jurisdictions by confining critique to separate sections clearly headed as such. Thus those who desire to know without criticizing are also served.

The authors' researches lead them to the view that root and branch reform of the rule is inadvisable. They cite the experience of six American States which at one time had statutory substitutes for the rule and then repealed the substitutes and re-established the common law rule. They discuss the desirability of a statutory change which would empower courts to mould limitations to bring them within permissible limits, in recognition of the fact that in the great majority of cases where the rule is infringed the disponor has offended in some minor detail not essential to his basic purpose. They admit the possibility that such a provision might prove unpopular with the judges although the discretion would be no wider than that involved in hearing applications for testator's family maintenance. In Victoria the course of interpretation of section 131 of the Property Law Act 1928 might suggest that the possibility is a real one.

In relation to the period allowed for vesting they suggest statutory restriction of the number of permitted lives in being so as to avoid the inconvenience arising from unthinking use of such devises as the 'Royal lives' clause. They question whether the allowance of twenty-one years is still appropriate on the basis that most testators would think that twenty-five is the minimum age of discretion for receiving a distribution of capital. In Wisconsin the period allowed after lives in being is thirty years while in Prince Edward Island it is sixty years which, however, may be carrying things too far.

They criticize the fiction of fertility regardless of age and suggest statutory changes of this aspect of the rule. They suggest modification of the principle that in considering whether an interest is *certain* to vest, if at all, within the perpetuity period the certainty must exist at the time of the creation of the interest. They discuss legislative changes in Pennsylvania and Massachusetts which adopt the principle that courts should wherever possible wait and see if the interest does not vest within the period, and pronounce it valid or void according to the event.

In considering class gifts, they strongly criticize the 'all-or-nothing' rule derived from *Leake v. Robinson*,[1] which requires the maximum as well as the minimum size of each member's share under a class gift to be ascertainable within the perpetuity period. On the doctrinal ground that when a member has attained a vested interest he should be regarded

[1] (1817) 2 Mer. 363.

as taking a vested interest in the whole property subject to partial divestment in favour of such other members as satisfy the condition precedent, the authors argue that members who are certain to have vested interests within the period should not be prejudiced by the possibility that other members may not qualify within the period: those certain to qualify within the period are in the position of persons given defeasible interests subject to being divested by a remote condition. The authors acknowledge that such is the state of authority that any such rationalization could hardly be brought about in any British country otherwise than by legislation.

They argue for ending the exemption of a possibility of reverter from the rule so as to bring it into the same position as a right of entry for condition broken. They applaud the decision in *Hopper v. Liverpool Corporation*[2] which is the only authority for applying the rule to possibilities of reverter. It may be remarked that if this view were to extend to interests under trusts of personalty analogous to determinable interests (in which the possibility of resulting trust would be in the nature of a possibility of reverter) cases like *Re Randell,*[3] *Re Chardon*[4] and *Re Chambers*[5] would have to be decided differently. It would also mean that although a trust for a charity in perpetuity and a trust for a charity to end within the perpetuity period would be permissible there could not be a trust for a charity by way of determinable limitation for an intermediate period. If *Hopper v. Liverpool Corporation* applied, such a trust would take effect as a trust for the charity absolutely. It would of course still be possible to set up a trust for Charity A with an executory interest in favour of Charity B on the happening of some event. The application of *Hopper v. Liverpool Corporation* to determinable limitations of personality would abolish the insubstantial but vital distinction between *Re Randell* and cases like *Re Bowen.*[6] The text of recent Massachusetts legislation which *(inter alia)* brings possibilities of reverter in land within the scope of the rule, is provided in an appendix.

The authors argue for a statute which would exempt all options from the rule. They refer to the experience of New York where options, however remote, are valid yet no demand for time restrictions on options has been made.

The application in England of the rule to administrative trusts and administrative power is criticized and the authors endorse the New South Wales statutory change which Victoria has adopted in section 73 of the Trustee Act 1953.

On the issue whether construction of an instrument should be influenced by the possibility that some part of it offends the rule against remoteness of vesting, the authors differ from Gray and reject what they call the 'remorseless' view. As they see it there is nothing in the policy of the rule inconsistent with the view 'that every possible measure should be taken, consistent with the language he has used, to bring a testator's will into compliance with the Rule rather than to find a violation of the law's prohibition' (p. 247). They deny that the rule has any punitive aspect of the kind implicit in the intriguing remark of Lord Dunedin in *Ward v. Van der Loeff*: 'I am afraid he [the testator] must take the consequences.'[7]

[2] (1944) 88 *Solicitors' Journal,* 362.
[3] (1888) 38 Ch. D. 213.
[4] [1928] Ch. 464.
[5] [1950] Ch. 267.
[6] [1893] 2 Ch. 491.
[7] [1924] A.C. 653, 667.

In chapter 12 there is a treatment of the doctrine limiting the duration of non-charitable purpose trusts which is something different from the rule against remoteness of vesting but which the authors are content to label the rule against perpetuities for want of a better name. The authors appear to regard this as a narrow doctrine confined to non-charitable purpose trusts. It seems, it is submitted, that it is of wider application, and that it is concerned to ensure that trust funds shall not remain unexpendable indefinitely. As such it has been called the rule against indefinitely indestructible trusts. At times it appears to be directed to the duration of a trust as in the trusts for the maintenance of animals, while at others it appears not to be concerned with duration as where property is given to a non-charitable association in which case it is sufficient if the members have the power to expend the property in the perpetuity period although they are not bound to do so. The width of its operation in relation to trusts for legal persons as distinct from mere purposes is obscured because the trust can usually be destroyed by the combined operation of the rule of construction that a disposition of income indefinitely is a disposition of the *corpus* and the principle in *Saunders v. Vautier*.[8] Thus a trust to pay the income of a fund to the X Corporation in perpetuity is *prima facie* good. It will be bad only if the testator has shown clearly that when he says that the corporation is to get only the income he means what he says. When the trust is for a non-charitable purpose there is no legal person who can call for the *corpus* and the rule requires that the trust terminate within the perpetuity period.

Admittedly, cases like *Re Chardon*[9] and *Re Chambers*[10] seem to suggest that there is no rule relating to indefinitely indestructible trusts where the beneficiary has only a determinable interest, but if we accept the authors' view that possibilities of reverter should be subject to the rule against remoteness that rule would ensure that the trust would not be indefinitely indestructible.

In chapter 12 the authors ask whether there can be a trust without a *cestui que trust* and they discuss trusts for unincorporated associations in this context. Should not the question be as to whether there can be a trust for a purpose which is not represented by an adversary entity who can enforce it? A trust for a charitable purpose can be enforced by the Attorney-General. A trust for an association which is not charitable, if regarded as a trust for a non-charitable purpose, is enforceable by the members. Many decisions have, in effect, recognized that a member has a special standing to prevent diversion of the association property from the objects of the association set out in its rules.

The authors accept the authority of cases which give effect to some dispositions to associations as dispositions to the individual members of the association at the time of the disposition. Such a construction not only raises many theoretical difficulties[11] but it strains reality for the sake of inadequate theory. Furthermore, is it so clear that each member's share of the disposition would be liable for his debts (p. 302)? Associates are not ordinary co-owners; the courts deny a right of severence otherwise than on dissolution unless the rules make special provision. Unless

[8] (1841) 4 Beav. 115.
[9] [1928] Ch. 464.
[10] [1950] Ch. 267.
[11] The reviewer has examined these cases in detail in (1956) 55 *Michigan Law Review*, 67, 235.

a creditor has a judgment against all the associates he could not seize a member's share while the association remains undissolved any more than a member could withdraw his share in the absence of special provision in the rules. Again, is it true that a rule of the association providing that all its property from whatever source should be capitalized and only the income used, would mean that the trusts of its entire property and all gifts to it would be invalid (p. 304)? If the rules constitute a contract between the members, would not the possibility of variation of the contract make any trust destructible in the manner required by the rule, or would the contract be regarded as a contract for value to create a trust which would impress an irrevocable trust on the property when received?

A book on a topic so intricate is bound to contain some points with which not all readers will agree, but all should agree that the book is a welcome accession to legal literature.[12]

H. A. J. FORD

The Proof of Guilt: A Study of the English Criminal Trial, by GLANVILLE WILLIAMS (Stevens & Sons Ltd., London, 1955), pp. i-viii, 1-294. Australian price £1 4s. 6d.

Dr Glanville Williams' position as the leading academic legal author in the British Commonwealth is made even more secure by this series of lectures for the Hamlyn Trust, now published under the title of 'The Proof of Guilt'. The book is an erudite yet clear discussion of many aspects of procedure, practice and evidence in criminal trials. In particular, Dr Williams devotes himself to 'the position of the judge as umpire; the defendant's freedom from being questioned; the mode of examining witnesses by question and answer; certain rules of the law of evidence; trial by jury, and for lesser offences trial by lay magistrate' (p. 1).

The approach is legislative, that is to say, turned towards a critical evaluation of present practices and a willingness to consider the legislative solution to any defects which may be demonstrated. Dr Williams is not, however, deluded into the thought that to point to the need for reform is therefore to achieve reform. Two quotations from the book should make this clear: 'It is perhaps hardly necessary to say that Parliament has not yet had time to attend to the report of 1925' (p. 126). 'Unhappily the debate on the Capital Punishment Report does not suggest that the Legislature will allow itself to be influenced by rational considerations' (p. 272).

When compared with European and American practice, Dr Williams' view of the overall efficiency of the English criminal trial is commendatory; but he is by no means insular. The longest section of the book is a discussion of the value of the jury system in which a cautious conclusion is reached urging its gradual abolition – even in those statistically few cases where the jury trial is still used – in favour of something like the German *Schöffen* system. Whether or not one agrees with this conclusion, the analysis is of great value in sweeping away many of the cobwebs of mythology and mystique which surround so many discussions of the jury system.

[12] Since this review was written the report of the Law Reform Committee on the Rule against Perpetuities (Cmnd. 18) has appeared. Dr Morris and Professor Leach have stated their intention of preparing a supplement to their book if the report of the Committee is translated into an amending statute.