this respect it has to agree that other countries can do the same thing."[7] Nevertheless, "our national position is to minimize the width of the territorial sea over which any nation may exercise sovereignty and at the same time to reserve (primarily for mineral exploitation) the use of the shelf for our nationals";[8] sea-floor mining and sovereignty; freedom of navigation, and the like. All in all, although the conference was called primarily to consider offshore boundaries and zones, it considered most of the practical problems relating to uses of the sea, its bed and its regulation, particularly in so far as United States might be involved.

These four volumes provide a most useful overlook for the student of the international law of the sea, with the American Assembly collection being the least technical and Dr. Bowett providing a careful analysis of the Conventions, to form a background to the specialized study of a far-reaching character analyzed at the Conference of the Law of the Sea Institute.

L. C. GREEN*

7 Alexander, *The Law of the Sea* 125.
8 *Id.*, at 311. *Per* Dr. Pontecoruo reflecting on the results of the conference.
* University Professor, Department of Political Science, The University of Alberta.

HISTORICAL FOUNDATIONS OF THE COMMON LAW. By S. F. C. Milsom. London: Butterworths. 1969. Pp. xiv and 466. $11.75.

Most legal history texts attempt a study of the English law and its development. They are orientated primarily toward the law itself. They may not always be an entirely introverted approach, giving so much of the social and general background as is necessary for a proper understanding of the subject. Such works as Potter's *Historical Introduction to English Law* (1958; 4th ed. by A. K. R. Kiralfy) and Plucknett's *Concise History of the Common Law* (1956; 5th ed.) follow this general pattern. It is a good, if traditional, approach. However, a new and perhaps more exciting approach is taken in this book produced by Professor Milsom. It is a book which concentrates on the historical foundations of the law and traces the genesis and growth of the rules from those foundations.

Professor Milsom's book has the avowed aim of presenting an interdisciplinary approach to the study of the history of the law. This approach is evident throughout the book and rarely does the author slip into an orthodox historical treatise. The social and economic background of legal institutions is evident throughout the book. It is natural to think that these might affect the law. However, the author's striving to produce a different approach occasionally produces odd results. Thus, the opening discussion in Chapter 9, which deals with Uses and Trusts of Land, is a curious digression into semantics.

Professor Milsom also traces the history of legal institutions. In most cases, he avoids plunging into the complicated details of the history. At some points, the reader may find himself becoming absorbed in the study of the development of some facet of the law when the author decides to leave that topic and turn to another. Happily, Professor Milsom has appended some notes of a supplementary nature and some

recommendations for further reading. This arrangement has helped to produce a very readable book, with no footnotes to break up the easy travel of the eyes over the words. On the other hand, this arrangement may be aggravating for the reader who wishes constantly to refer to the back of the book where he will find not only the notes, which refer to specific pages of the text, but also a Table of Cases and a Table of Laws and Statutes. This is followed by an index of technical words referred to in the text.

In his Introduction, Professor Milsom makes some excellent points. They are points which are obviously the product of a lot of thought and which are expressed lucidly. Some of them are intensively thought-provoking, and the reader may well find himself attacking or defending Milsom's assertions. Thus, in referring to the empirical and inductive approach of common law lawyers, he attributes to them a lack of vision and a lack of overall purpose when on page xii he says that,

> Lawyers have always been preoccupied with today's details, and have worked with their eyes down.

While this statement is largely true, one may not accept it entirely. The results and consequences of rules are regarded as important by other than academic lawyers. Why else would so many barristers have insured themselves against liability for the dispensing of negligent advice after the decision in *Hedley Byrne* v. *Heller*,[1] or be so sensitive to the judges comment, "But Mr. Smith, that proposition would mean that a great many people could sue . . ."

After the Introduction, the book is divided into four general parts; the Institutional Background; Property in Land; Obligations and Crime. While the headings and sub-headings look orthodox in nature, it should be remembered that the content is not. Instead of a mundane examination of the rules, Milsom embarks upon an examination of the rationale and reasons for them. He occasionally challenges what, to others, may seem axiomatic and unchallengeable. For example, on page 77 he says,

> (Equity) did not grow up to deal with flaws in a pre-existing system of law; and the idea that the law could be unjust, if comprehensible, would have been abhorrent. All failures were mechanical, arising either out of jurisdiction, there being no ordinary tribunal competent to deal with the matter, or out of proof, a competent tribunal being incapacitated in the particular case . . . .

While exposing some assumptions to a cynical reality the author shows the logic behind certain early assumptions and institutions of the law. He does this with the trial by battle, the jury and the grand assize. Occasionally, he goes into slightly disproportionate detail to do so. One may feel this about his treatment of the "degrees", or hands through which land might have passed after leaving the seisin of the demandant or his ancestor if the present tenant was to be reached by a writ of entry. However, the reader will have his own impressions of what requires detail and what is essentially a side-issue.

Any reader will like some parts of the book more than others. Preferences will often be a result of the interest felt by the reader in the subject-matter. The book itself appears to be very even in its treatment. Altogether, the book is very worthwhile and is a necessity for anyone who professes to have an academic approach to the law.

—JEREMY S. WILLIAMS*

1 [1964] A.C. 465, [1963] 2 All E.R. 575.

* Assistant Professor of Law, The University of Alberta.