PLATE VIII

J. H. C. MORRIS

Paul Laib

This portrait hangs in
Magdalen College Law Library

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JOHN HUMPHREY CARLILE MORRIS
1910–1984

I

JOHN MORRIS was born in Wimbledon on 18 February 1910, the elder son of Humphrey William Morris and his wife Jessie Muriel, née Vercoe. This was a legal family, for his father and grandfather, Howard Carlile Morris, both had successful careers as City solicitors in the firm which his grandfather founded and which became H. C. Morris, Woolsey, Morris & Kennedy. The family tradition was carried on when Morris's younger brother, Michael Henry Carlile Morris, who won the City of London Solicitors' Company Grotius Prize, joined the firm. At the age of ten Morris went to St Peter's Seaford, and from there to Charterhouse. He was already large in stature, and his dislike of Charterhouse may have stemmed from the teasing which his size attracted. This did not inhibit his academic progress, and in 1927 he was elected to a Holford Scholarship at Christ Church to read history under Keith Feiling and J. C. Masterman. He spent a six-month period between school and going up to Oxford in 1928 in Lausanne, studying French and Italian, and also spent some time in Italy where he formed his lifelong love of the country and its art.

His career at Christ Church was at first unsettled. After two terms and at the wish of his father he changed from history to law. His relationship with Grant Bailey, the law tutor, was not happy. Morris already had a restless, critical and questioning mind. He was unlikely to have been an easy pupil and certainly not of someone for whose intellectual capacity he had little regard. His request to change tutors was fortunately accepted and he went to [Sir] Theo Tylor, Fellow and Tutor in Law at Balliol, for whom he retained a great affection. The success of this change was seen in his First Class in the Final Honour School of Jurisprudence in 1931, followed by a First Class in the BCL in 1932 and his election as Eldon Law Scholar in 1933—though to his considerable regret the Vinerian Scholarship eluded him. Whilst at Christ Church he rowed for the college for two years, in the second eight.

He had joined Gray's Inn, where he was Lord Justice Holker

Senior Scholar, and was called to the Bar in 1934. He was a pupil in Sir Wilfred Greene's chambers and practised at the Chancery Bar in the chambers of Sir Andrew Clark. He did not find life at the Bar particularly congenial, and the nervous strain of advocacy was not to his liking. Nevertheless, others felt that he would have made a most successful barrister, and it was against the advice of both Tylor and Greene that he decided, after a struggle with his conscience, to return to Oxford in 1936 as Fellow and Tutor in Law at Magdalen College. He never regretted this decision, though Professor Guenter Treitel has pointed out that 'those who later heard his powerful arguments on a wide range of college and faculty issues must have thought that his move to academic life had deprived the bar of a very considerable advocate'.[1] Over the years, however, he did on occasion provide advice and opinions to both solicitors and members of the Bar on difficult areas of law in which he was expert. For example, he advised on whether Somerset Maugham could validly adopt his fifty-seven year old secretary in order to deprive his daughter of rights of succession;[2] and he appeared as counsel in the House of Lords on at least one occasion.[3] So he did not lose touch with the practice of the law.

In 1939, Morris married Mercy Jane Kinch, the daughter of Stanley Asher Kinch, a civil servant. They had no children. In so much that Morris did, teaching, writing, sailing (for he was an ardent yachtsman), Jane Morris was closely involved. She has rightly been described as the 'mainstay of his life'. Generations of pupils and friends talk of hospitality in the Morris's Magdalen College flat in Longwall and later at Tubney Lodge, when Jane's calm and humorous intelligence matched her husband's robust conversational gambits. Perhaps fewer were aware of his wife's support in all his writing, sharing for example the burden of proof reading all his major works by the reading aloud of the proofs to one another. As for sailing, that was where their marriage began, honeymooning in the Baltic on their new ten ton Bermuda rigged sloop, 'Mercy Jane', which they had had built in

[1] This and later references to Treitel are to an amended version of the address which he gave at the Memorial Service for John Morris on 2 March 1985 and which is reproduced in the *Magdalen College Record* (1985) pp. 34–41. The address as delivered is printed in [1984] B.Y.B.I.L. ix, an appropriate place as Morris was a member of the Editorial Committee of the Yearbook from 1947 until his death.

[2] Morris, *Conflict of Laws*, 1st edn, p. 211.

[3] *Government of India* v. *Taylor* [1955] A.C. 491.

Sweden. The late summer of 1939 was a threatening time and they had to sail the yacht home from the Baltic without a crew but with unwelcome attention from the German navy. The yacht had no radio receiver and they arrived back in Lowestoft to be told by the boatman who tied them up that England and Germany had been at war for two hours.

The outbreak of war saw Morris agitating to join the RNVR, having to overcome the obstacle of age (he was by then thirty) and the fact that he was in a 'reserved occupation'. Strings were pulled and by April 1940 he was an officer cadet in training at HMS King Alfred. Within three weeks he was commissioned into the RNVR and posted as a member of a small naval contingent to the Faeroes, to prevent the islands falling into German hands after the fall of Denmark. Almost two years' inactivity led to his return to Britain to serve at Major Landing Craft Headquarters in Troon, Ayrshire, building up the force of tank landing craft for the invasion of France. He regretted that he never saw service at sea, though his characteristic comment was that 'I suppose they think I'll do less harm behind a desk'. He was released from naval service at the end of 1944, with the rank of Lieutenant-Commander, RNVR, when Magdalen sought his early release under a special dispensation which he described as applicable to university teachers and bricklayers.

When he had first arrived in Magdalen as a law tutor in 1936, the study of law in that college was far from distinguished. We are even told that his predecessor hid in a wardrobe in order to escape from the prospect of giving a tutorial. All this was to change. Very quickly, he had established the college's law society, named after Lord Atkin, then the most distinguished Magdalen lawyer; and more changes followed his return to Oxford early in 1945. A separate Law Library was established within the college (a pattern to be followed elsewhere), ensuring that those reading law had access to books twenty-four hours a day; and the college was persuaded to employ a second law tutor, appointing Rupert Cross to the position part-time in 1946 and electing him to a fellowship in 1948. Thus began an unrivalled teaching partnership which lasted until Cross's election as Vinerian Professor in 1964. Morris had not only perceived Cross's ability but had also been prepared to work hard, overcoming a number of difficulties, to ensure his return to Oxford, and their friendship was close and long lasting. The efficiency which characterized all that Morris did could be seen in his teaching methods. The introduction of reading lists for law students in

Oxford and elsewhere can be attributed to him. Whilst he was not the first Oxford tutor to indicate what cases a student ought to read—Stallybrass at Brasenose had adopted this radical step before the war by simply telling his pupils what to read—Morris was the first to produce a printed list of the appropriate cases, statutes, references to textbooks and law review articles. The material was well ordered, and often accompanied by essay titles or problems to be attempted. Furthermore, Morris was conscious that, although the amount of work to be mastered week by week was, and should be, demanding, it had also to be achievable. He was careful to revise, and prune, his lists from year to year—avoiding the trap into which many of his imitators have fallen of simply adding more material to an already overcrowded list. Very soon, he adopted for his lectures materials similar to those he devised for tutorial teaching. He was also a flexible teacher, not committed to tutorials when some other method, such as college classes, seemed more appropriate. Morris was a superbly organized teacher and he influenced by example not only his Oxford colleagues but a large number of Oxford law graduates who went on to teach in a wide variety of universities.

Many of his pupils will testify that he set high intellectual standards and that to go to a tutorial unprepared or with a poorly researched or written essay would inevitably lead to an uncomfortable hour. To those, however, who had laboured hard but with little success in mastering the week's work, he provided patient, careful guidance. He was a forceful teacher and, as such, ran the risk, with those not willing or able to stand up to his powerful personality, of their too readily adopting his views. On the other hand, he could be persuaded by the persistent of the merit of some point which at first sight he had rejected, and would be warm in his praise of the student who had persevered. A tribute to Morris as tutor, typical of many, is that from Sir Nicolas Browne-Wilkinson, Vice-Chancellor of the Chancery Division:

> As a tutor, he was frightening and effective. He certainly did not frighten everybody: but he did me. But even this did not stop him being the most marvellous tutor. His clarity of thought coupled with the ability to organize complex materials was remarkable. To the pupil this was the more valuable when combined with Rupert Cross' flexibility. John was the didactic teacher—'the Master'; Rupert the discusser and the listener. I owe a long term debt of gratitude to John for teaching me to aspire to a clear, organized exposition of a subject, even though I could never achieve his skills.

It is said that the best memorial that a teacher can have is to be found in his pupils. Morris's pupils achieved distinction in the practice of the law, holding high judicial office in Britain, in other countries of the Commonwealth, and in the USA, in government and in the academic world of law. What is more they held him in great affection, if not a little awe, not least for his capacity to inspire. One particular manifestation of this affection was the dinner given for him by his former pupils in Magdalen in 1968 at which he was presented with two portraits of himself. One portrays him against a Finnish seascape (and is reproduced as the frontispiece of *Contemporary Problems in the Conflict of Laws*);[4] the other is more formal and hangs in the Magdalen law library. Affection for Morris stemmed in no small part from the care with which he not only taught his pupils but also dealt with the whole range of problems they took to him. Indeed, his concern extended to personal and financial generosity, including even lending the 1926 open tourer Rolls Royce, which he had bought after the war, to his pupils for a holiday in France. He put great effort into fostering the careers of his pupils, whether in practice or in academic life. Many of those destined for the Bar were directed to his own Inn, Gray's Inn, with the result that a number are now Benchers of that Inn. Morris was proud of the achievements of his pupils. As Guenter Treitel has said, 'he liked to make lists of those who held high judicial office or who had achieved success in other fields'. He was also to be heard rating them against one another in terms of intellectual ability. Despite the time and trouble he took in advising his pupils, he was not always successful in steering them in what he regarded as the right direction, as is made clear by Ronald Dworkin, Professor of Jurisprudence in Oxford:

> John was one of my tutors at Magdalen and he was superb. He taught his students not only the details of the law—incomparably—but also love for it. One of my clearest memories is of our first meeting. I told him that although I had decided to study law at Oxford, I had studied philosophy as an undergraduate in America, and was anxious to continue studying it at Oxford. 'The law', he said to me, grandly and ominously, 'is a jealous mistress. She will not have you flirting with the trollop Philosophy on the street corners of Oxford'.

In a time when teachers of law now assume responsibility for a much narrower range of topics than was once the case, it is worth

[4] A volume of essays published in his honour in 1978 to mark his retirement, and which originally appeared as Part 4 of (1977) 26 I.C.L.Q.

recording that Morris not only taught in Magdalen the subjects for which, through his writings, he is well known—property law, contract and the conflict of laws—but also much of the rest of the immediate post-war syllabus, including for example, Roman Law, through which he guided at least one future Lord Justice of Appeal. By the late 1960s, influenced by the student unrest of that time, he had become disenchanted with undergraduate tutorial teaching, a not uncommon consequence of the range and amount of teaching with which a law tutor was burdened. Instead in fulfilment of his teaching obligations to the University he devoted himself to the teaching of the conflict of laws to graduate students reading for the Bachelor of Civil Law (BCL) degree. In fact, he had long had formal and specific teaching responsibilities in this field. In 1939 he had succeeded [Sir] John Foster as All Souls Lecturer in Private International Law (a post held by Dicey from 1910 to 1912) and in 1951 was appointed Reader in the Conflict of Laws, a post which he held until his retirement in 1977, being appointed then as Emeritus Reader. Despite this almost career-long link with one field of law, he had, in earlier years, lectured on the rule against perpetuities, and also on quasi-contact. To many law students, the rule against perpetuities and the conflict of laws are two topics, perhaps *the* two topics, which are perceived to be arcane and burdened with complexity. That may be why he chose them. Whatever the reason, his lectures revealed the skills of the great teacher. Through masterly organization of material and lucid, crisp presentation, he made clear that which seemed confused, threw light on dark corners and brought order where all seemed chaos, all leavened with rather sardonic humour. At times the very lucidity of his lectures may have, for some, made all seem easier than it really was. For the abler student, the lectures provided both intellectual rigour and stimulus for further thought.

When he decided to concentrate his energies on teaching the conflict of laws, undergraduates in Magdalen and elsewhere were deprived of the experience of being taught by him, but graduate students reading for the BCL had his undivided attention. The conflict of laws was then a compulsory subject in the BCL with the result that in lectures, and in seminar classes, for decades some of the most able young lawyers drawn from all parts of the common law world sat at his feet. There is little doubt that the intellectual standards revealed in his lectures and demanded in the seminars have influenced judges, practitioners and academics in many countries. For example, Sir Zelman

Cowen has commented that Morris's conflict of laws lectures were 'an unforgettable experience' and the only time that he waited with impatience and expectation for the next lecture.[5] Many students viewed the seminars (often conducted jointly with colleagues in the Law Faculty) with mixed feelings of trepidation and expectation. Morris was a formidable figure, physically as well as intellectually. Few who attended the seminars will forget his stalking into the room with his heavy measured tread, gown billowing, attaché case in hand. Out would come the problem sheet for the week and the first 'victim' would be called upon by name to unravel, for example, some complexity of the choice of law rules relating to succession by legitimated children. In later years, it was often the practice for those attending the seminar to spend together the two hours before it began, drinking coffee in the graduate common room of the St. Cross Building, ensuring that all possible aspects of the problems for discussion had been well covered. Those graduate students would have been surprised to learn that, at the end of the seminar, Morris would himself have been anxious as to whether it had been a success, whether all the relevant issues had been examined, and whether all the students had grasped the various arguments. On occasions, a graduate student would be unwilling resolutely to press a point which he thought to be correct, for fear of being shown all too clearly to be foolish, especially if it ran counter to some proposition in Morris's major work, Dicey and Morris, *The Conflict of Laws*. Nevertheless, dogged pursuit of the point in private correspondence resulted in careful examination of the issue, acceptance of the point, help for the student in preparing a note on the issue for a law journal, and an amendment in the next edition of Dicey and Morris. There is little doubt that, for a considerable number of those in the Commonwealth who currently teach or write about the conflict of laws, their interest in and fascination with the subject originated in those seminars.

He had no interest in involving himself directly in the affairs of the University as a whole. He was not a 'university politician', but nor was he a reclusive scholar. His devotion to Magdalen meant that he was a powerful force in debates within the college. Similarly, his deep concern for the law and for the teaching of it led to his playing an active part in the deliberations of the Oxford Law Faculty. As a member of his college's governing body his views commanded great respect. His contributions,

[5] Cowen (1980) 28 Am. Jo. Comp. L. 348.

always well prepared, were measured and weighty, and his influence was considerable. One area which he made his own was the College statutes where his skill as a draftsman of which the Bar had been deprived was effectively displayed. Indeed he maintained an active interest in the statutes even after retirement. On other matters, he was not frightened of controversy, indeed some would say that he relished it, crossing swords with most Fellows at one time or another, though he was usually quick to make up any differences. He was a man of firm opinions and he would argue (and canvass) vigorously in support of them. Often he was successful; and the *Magdalen College Record*,[6] (1984), contains his account of the pre-war (1938–9) college politics involved in deciding whether to use the Mackinnon bequest to support Magdalen College School or, as he successfully advocated, to fund scholarships in law and mathematics. He was the first holder of the office of Clerk to the College (secretary of the governing body) and set high standards of care and accuracy. He also held the office of Vice-President, though only for one year, shorter than was customary; but he gave it up feeling, mistakenly it would seem, that he had lost the confidence of the other Fellows.

Although he won many of the battles he fought in college, he was not always successful. He was firmly opposed to the admission of women undergraduates to Magdalen, though often very active in promoting the careers of some of the women graduate students whom he had taught. He is reported to have seen one virtue in Magdalen's decision to admit women: 'At least they cannot grow beards in their second year.' Nevertheless the decision provoked one of his threats, made from time to time, to appeal to the Visitor of the College on the voting procedure involved. Despite this combativeness, he is remembered in Magdalen for his kindness, his generosity with his time and knowledge and his occasionally robust mischievousness. Few students who attended his lectures or classes would identify him as a man who threw into the Cherwell a Common Room electric fire which he disliked, or who pulled the garden roller around the College cloisters and then to the top of the Hall steps. The damage caused when he let it go was something for which the Dean required him to pay; but he probably thought that it was worth it. His affection for Magdalen was long and deep and he lived in a College house, Tubney Lodge, for many years. His pupils and

[6] Pages 34–8.

colleagues have fond memories of sitting there under the trees, and of the marvellous sweet peas which his wife grew in the garden. Sadly, in retirement he did not see eye to eye with the College Estates Bursar of the day over the terms of his continuing to live there—an episode which hurt him greatly and which led to his leaving Oxford to live in Orford in Suffolk. The move, combined with failing health, meant that his visits to Oxford thereafter were infrequent, to the distress of his Oxford friends.

In the deliberations of the Law Faculty, as in Magdalen, Morris was forceful in debate. As Guenter Treitel has said: 'He held strong views on many of the issues that came before those bodies and he argued for those views with all the force of his outstandingly incisive intellect. He was an academic politician in the good sense, his interest was in policies and principles, not in personal power or in parties.' His overriding concern was the pursuit of high academic standards on which he did not compromise. This took a variety of forms. He exerted a powerful influence for many years on the Applications Committee of the Oxford Law Board. He was, through his BCL teaching, directly concerned with the academic standard of graduate law students admitted to Oxford and he ensured that the standard was a high one. He instigated changes in the composition of the Law Board so that it no longer depended on seniority, but enabled younger members of the Faculty to play their part—again the objective was the raising of standards. In this, as elsewhere, he perceived the objective as justifying the means by which it was achieved even though that caused hurt and resentment to those affected. A more open, less aggressive and, at times, less conspiratorial, approach might have achieved the same result in a more equable atmosphere. Unusually, he was never Chairman of the Law Board—never wishing to be and, in truth, lacking the temperament of a chairman. As chairman, he would have been unable to sweep together his papers and stalk out of the room when his colleagues had failed to accept the wisdom of his views. One activity of which he certainly bore his fair share was examining, both of undergraduates and in the BCL, particularly the latter in later years. Having been resolute in the upholding of standards for admission to the BCL, he was in fact a generous examiner, seeing first class ability where others might not have done. For many years he was a Trustee of the Eldon Law Scholarship Fund, a duty which he took most seriously.

Morris never held a chair at Oxford—though he was a Visiting Professor at the Harvard Law School in 1950–1 and

(after his retirement) Arthur Goodhart Professor of Legal Science and a Fellow of Gonville and Caius College, at Cambridge in 1979–80. His experience in both Cambridges was obviously enjoyable and successful. Indeed the American visit gave him the opportunity to write his major article on 'The Proper Law of the Tort', published in the *Harvard Law Review* in 1951;[7] and his encyclopaedic analysis of polygamy in the conflict of laws was published in the same journal two years later.[8] Having declined all other offers of visiting professorships, it was fortunate that his acceptance of the Goodhart chair led to his spending a delightful year in Cambridge, and while there he incorporated his Oxford DCL as a Cambridge LL D. His Cambridge colleagues remember him playing a full part in the life of the Law Faculty and of his college, taking great pleasure in performing the ritual duties of Junior Fellow in the Combination Room. Indeed his decision to live in retirement at Orford, though partly the result no doubt of a wish to live beside the sea, was also influenced by being within easy distance of both friends and books in Cambridge. He once remarked that Cambridge was a place for making friends, while Oxford was one for making enemies. Perhaps it was fortunate that he spent just one year in Cambridge because within a month or two of leaving Cambridge he had an irreconcilable difference of opinion with the Cambridge Law Faculty over an examining issue, vowed never to examine for Cambridge again and told his Oxford colleagues of his displeasure.

He had been offered and declined the Vinerian Chair of English Law in 1964, on the retirement of H. G. Hanbury. His reasons for declining the invitation were mixed and characteristic. Acceptance would have involved his leaving Magdalen, which he had no desire to do, and going to All Souls, a college for which he had no affection and where in 1932 he had been an unsuccessful candidate for a prize fellowship, a competition in which [Lord] Wilberforce was one of the two successful candidates. Morris had found the unrehearsed oral translation a particular ordeal. Though perhaps this second reason might be regarded as somewhat petty, his antipathy to All Souls was very real: he said that its building ought to be transferred to the University for use as offices and its revenues divided among the

[7] (1951) 64 Harv. L.R. 881.

[8] (1953) 66 Harv. L.R. 961, reprinted from *Festschrift fur Martin Wolff*, p. 287 (1952).

women's colleges. However, his third reason was characteristically generous. Morris knew that, if he declined, the Chair would be offered to Rupert Cross whom he believed 'wanted it more than I did and I didn't want to stand in his way'. Cross's acceptance of the Chair meant the end of their highly successful partnership as Magdalen law tutors.

Morris had no interest in attending conferences or giving guest lectures in this country or abroad. This meant that he was personally known, primarily, to his Oxford colleagues and his pupils, whether from Magdalen or those who, in attending his BCL seminars, also counted themselves as his pupils. His reputation for many depended, therefore, on his published work and it is a mark of its distinction that there was ample public recognition of his scholarship and his contribution to the law. He was only thirty-nine when, in 1949, he was awarded the degree of Doctor of Civil Law in Oxford—the red robes of which he always wore as an examiner. In 1954 he was elected an Associate Member of the Institute of International Law, though he later resigned presumably because he had little interest in attending its biannual meetings in different parts of the world. Other honours followed: Associate Member of the American Academy of Arts and Sciences (1960); Fellow of the British Academy (1966); Honorary Bencher of Gray's Inn (1980); and in 1981 he was appointed a Queen's Counsel. On his retirement from Magdalen in 1977 he was, to his great pleasure, elected an Honorary Fellow of the college; and in that year a series of essays in his honour was published in the *International and Comparative Law Quarterly*, and republished the following year as a separate volume entitled *Contemporary Problems in the Conflict of Laws*. It is notable that the contributors were drawn from a variety of countries.

II

The reputation that Morris had throughout the common law world, though he was essentially an Oxford figure, stemmed largely from his writings. He was author, general or advisory editor of, or substantial contributor to, twenty-seven different volumes of legal works. In an era of increasing specialization, those bare statistics are the more impressive as the books in question range over at least four major fields of study and run the gamut of all types of legal publication: monograph, students' textbook, practitioners' works, encyclopaedia, case books, and collection of materials. That is to say nothing of a variety of

articles and notes, some very influential and spanning more than four decades, which appeared in a range of legal journals.

One characteristic of his work was his ability, alone or as leader of a team, to take an established practitioners' work and revitalize it, by a combination of ruthless pruning, careful scholarship to establish, for example, that the authorities listed in the footnotes really did support the proposition for which they were cited, and imaginative rewriting. This is exemplified in one of his first works, the ninth edition of *Theobald on Wills*, published in 1939 and marking the beginning of a relationship to last more than forty years with his principal publishers, Stevens/Sweet and Maxwell. It is worth noting that he had been teaching less than three years when *Theobald* was published, following on by only a month or two from his first book: *Cases on Private International Law*. There had been a gap of some dozen years since the previous edition of *Theobald* (1927) which was published shortly after the major property legislation of 1925. The longer perspective which came from writing at the end of the 1930s provided Morris with the confidence to jettison much of the older pre-1925 material, whilst still finding room for the new, with the result that his edition was smaller than its predecessor by some 300 pages and cheaper! This editorial resuscitation was hailed as a 'conspicuous success' whilst leaving the style of the work unimpaired.[9] He went on to edit the tenth (1947) and eleventh (1954) editions, further reorganizing the work in the process. In all three editions, he retained the essential approach of the work—clear, authoritative statements of the law, but gradually allowed himself room for some critical comment and references to periodical literature—thus introducing practitioners on the law of wills to unfamiliar material; but he was criticized for not doing this faster and more fully.[10] Certainly, *Theobald* in his hands remained essentially a compendious work of reference, rather than one of analysis of principle; though where authority ran out and inconclusiveness took over, he did not hesitate to point to the uncertainty. It is also noticeable that, in successive editions, his interest in the conflict of laws and the law of perpetuities becomes increasingly apparent.

After 1954 the continuing task of making *Theobald* into a livelier and more useful book passed into other hands, but Morris did not lose his interest in the law of wills. For example, in 1966

[9] T.E.L. (1939–41) 7 C.L.J. 290.
[10] Kennedy (1948) 7 U. Tor. L.J. 563.

the Court of Appeal in *Re Jebb*[11] concluded that a new and less strict approach should be adopted to the construction of wills. The courts should abandon technical rules of construction and look simply to see what the testator intended. In particular the rule that the term 'child' in a will meant a legitimate child should be abandoned in favour of trying to determine just which children the testator intended to include, including in the particular case an adopted child. Morris was furious, describing the approach of the Court of Appeal as 'Palm Tree Justice', and thundering:

> If this new attitude to the construction of wills comes to prevail, it will not be sufficient just to rewrite the chapters on gifts to children in the text books on wills. The text books themselves will have to be scrapped, and construction reduced to the level of guesswork. It is submitted that rules of law binding on the court cannot be evaded merely by calling them 'technical'.[12]

The one monograph that Morris wrote was also in the field of property law. He had lectured in Oxford on the rule against perpetuities and, when he visited the Harvard Law School in 1950–1, he found there one of the American experts in the field, Professor W. Barton Leach, who shortly thereafter reciprocated that visit by coming to England for a year. Leach was an established authority on the topic, and wrote on it at length in his seven-volume treatise *American Law of Property*, published in 1952, as well as in the *Harvard Law Review*. Morris's interest in the complexities of this difficult area of property law was also well evidenced in law journals: he wrote substantial pieces in the *Cambridge Law Journal* in 1950 on 'Ulterior Limitations and the Rule against Perpetuities',[13] in the *Law Quarterly Review* in 1954 on 'The Rule against Perpetuities and the Rule in *Andrews* v. *Partington*',[14] and a joint article with Leach published in 1954 in *The Conveyancer* on 'Options to Purchase and the Rule against Perpetuities',[15] as well as other shorter notes on the topic.[16] Much of the material which both Morris and Leach had already published was utilized, skilfully woven in with new material written by Morris, to produce their joint monograph, *The Rule*

[11] [1966] Ch. 666.
[12] (1966) 82 L.Q.R. 196, 202.
[13] (1950) 10 C.L.J. 392.
[14] (1954) 70 L.Q.R. 61.
[15] (1954) 18 Conv. N.S. 576.
[16] E. g. (1949) 13 Conv. N.S. 289.

Against Perpetuities, published in 1956. A second edition followed in 1962 but, to the regret of many, no third edition was forthcoming to take account of the Perpetuities and Accumulations Act 1964 in whose genesis Morris played a substantial part.[17]

The Rule Against Perpetuities embodied all that is admirable in a monograph. It provided a clear exposition of a subject of whose complexities many were fearful, without in any way minimizing those complexities. Not only was it complete for English law (citing only a selection of the voluminous American material) but it was critical in its approach, revealing through scholarly analysis and (often caustic) humour the shortcomings of this branch of the law throughout the common law world. Some readers of the work might conclude that the world was wholly populated with 'fertile octogenarians', 'precocious toddlers', and 'unborn widows'. A case for reform was clearly being made, for solutions were suggested for all the weaknesses portrayed. The book was reviewed in journals across a wide range of jurisdictions, for example England, Australia, Canada and the USA and equally widespread was the praise lavished on the work—'an indispensable tool for perpetuities scholars everywhere';[18] 'a major contribution to the literature of the law';[19] 'to be used with profit alike by the beginning student and the learned judge';[20] 'an erudite and fascinating exposition';[21] 'an accurate, scholarly and provocative work'.[22]

The rationale for the perpetuities rule—a rule which in its classic form required that an interest to be good must vest, if at all, not later than within some life in being at the creation of the interest—is subjected to close criticism. Many of the justifications for its existence which had been advanced are convincingly rejected—it could not be said to prevent undue concentration of wealth in the hands of a few; it was far from efficient in preventing eccentric or capricious dispositions; whilst socially desirable to ensure that the wealth of the world was controlled by the living and not the dead, it was unclear how the rule promoted this. The one convincing reason which the authors found[23] was

[17] See below pp. 467–8.
[18] (1957) 70 Harv. L.R. 762.
[19] (1956) 55 Mich. L.R. 154.
[20] (1957) 42 Iowa L.R. 656.
[21] (1957) 20 M.L.R. 99.
[22] (1956) 72 L.Q.R. 604.
[23] Pages 17–18.

that the rule struck a fair balance between the desires of present and future generations to do what they wished with the property they enjoyed. That was convincing enough to lead them to the conclusion that the rule did more good than harm. Characteristically, Morris sought to see the rule retained and substantially reformed, rather than abandoned altogether—a step advocated by more radical critics of the rule. Another note of caution is seen in the abandonment of the idea that the courts should have a *cy-pres* jurisdiction to amend offending limitations to bring them within permissible limits. This was thought likely to be too unpopular with the judges;[24] a criticism that one might have expected from Morris was that it smacked of palm tree justice! At the end of the day, the *Rule Against Perpetuities* was not only a masterly monograph, but also a major influence on the reform of the rule.[25]

One further contribution that he made to property law was through Sweet and Maxwell's *Property Statutes*. The first edition of this pocket library of essential property legislation for students appeared in 1968 with Morris in the role of Advisory Editor, a task which he undertook also for the 2nd (1972), 3rd (1977) and 4th (1982) editions. In all of this, as his title suggests, his work was purely advisory, commenting on the proposed selection of statutes for inclusion as well as casting his customary eagle eye over the proofs.

Just as *Theobald on Wills* had been in need, before the war, of an intellectual blood transfusion, so rather later could the need be seen in another major practitioners' work in quite a different field of law: *Chitty on Contracts*. Some steps had been taken, just before and after the war, to breathe new life into the book, but more needed to be done and in the late 1950s Morris was asked by Sweet and Maxwell to take over as General Editor and to assemble a team of Oxford lawyers to prepare a revitalized 22nd edition. His contribution was by means limited to the organization of the project for, of the forty-two chapters in the two volumes, he assumed editorial responsibility for more than a quarter; but it was undoubtedly in terms of style and standards that his contribution can most clearly be seen. The work was, at last, sensibly and conveniently organized, the old arrangement having been illogical and haphazard and described as defying rational analysis; but change went far wider than that. Most of

[24] Page 35.
[25] Discussed below pp. 467–8.

the first volume, on General Principles, was rewritten—obsolete topics were abandoned and increasingly important ones, such as exemption clauses, were given far fuller treatment. There was acknowledgement of the fact that the practitioner might find assistance and enlightenment in the pages of law reviews, as well as of the law reports, and there was substantial citing of periodical literature; and the new edition revealed an appreciation that not all in the law of contract was always clear, coupled with an indication of lines of argument to be put to a court for the resolution of the doubts. As General Editor, Morris expected of his team the high standards of scholarship and accuracy that he demanded of himself. His expectations were met, for the 22nd edition of Chitty (1961) marked a distinct change in its fortunes, seen in the continued success of ensuing editions, though his only further contribution was as one of the team of editors of the 23rd edition (1968) under the General Editorship of Professor A. G. Guest.

Notwithstanding the success and influence of his writing in the property and contract fields, there seems little doubt that Morris would most wish to be remembered for his contributions to the conflict of laws. The first of his books to be published was *Cases on Private International Law* (1939) which ran to three further editions (1951, 1960, 1968). The book was intended to act as a companion to Cheshire's *Private International Law*, in 1939 the standard textbook in the field, and Morris's casebook followed very much the order and arrangement of Cheshire's work. That is not to say that, even then, he slavishly followed Cheshire's opinions, for the casebook combined a careful selection of the leading cases (virtually no statutes) with short, pithy notes on areas of difficulty or debate, such as the need perceived even in 1939 to reform the law of domicile, clarification of what the law actually was (rather than what Cheshire hoped it to be) on polygamous marriages, and the drawing of a clear distinction between the law governing the assignability, and the validity of the assignment, of a chose in action. Generations of students of the conflict of laws, for that is what Morris preferred to call the subject (thus revealing his closer affinity with the North American approaches to the topic than with those of Continental Europe), have been brought up to believe that there must have been a combative rivalry between Morris and Cheshire; and that belief centres most obviously on their differing views on the law to govern capacity to marry—Morris arguing that it should be governed by the ante-nuptial domicile of each spouse, Cheshire that it be

governed by the law of the intended matrimonial home (or domicile) or, failing that, by the law of the husband's ante-nuptial domicile. That debate, still judicially unresolved at the highest level, finds its origin in Morris's note on the matter in the first edition of his *Casebook*,[26] but the book also makes clear what many who heard or read Morris in later years may not have realized, namely his great respect and admiration for Cheshire. On the rare occasions when they taught together, in a seminar class for example, Morris would appear in awe of him and reluctant to contradict him, even when differing vigorously from his views. In the Preface to the first edition of the *Casebook*,[27] he writes:

> To Dr. G. C. Cheshire, Fellow of Exeter College, I owe a deeper debt of gratitude than I can ever hope to repay. My interest in this subject was first aroused by his stimulating lectures, and without his constant help and encouragement this book would never have been begun, much less finished. If I have some times propounded views which are at variance with his own conclusions, it is not because I wish to attract spurious notoriety by crossing swords with so illustrious an adversary but because I believe that English Private International Law badly needs criticism and that there is often room for diversity of view.

There is no doubt that Morris provided such criticism based on careful, learned, logical analysis. Whilst always accepting diversity of view, he was a formidable defender of his opinions. Interestingly, he also revealed later in life the traits for which as a young man he had criticized Cheshire—namely, making propositions which embodied what he clearly hoped the law would be, trusting perhaps that the courts would follow his lead, rather than what a more dispassionate observer might conclude the law actually was. Perhaps the best example of this was his indication that the choice of law rule in tort cases was to be found in the speeches of Lord Wilberforce and Lord Hodson in *Boys* v. *Chaplin*,[28] despite the fact that their reforming approach did not command majority support in the House of Lords. He was also not averse to driving out of his mind the very existence of a case which provided tiresome authority for a proposition which he believed to be socially and legally wrong—as with his decision never to mention anywhere in his writings the Privy Council case of *Drammeh* v. *Drammeh*[29] which cast doubt on his view that a man

[26] Pages 121–4.
[27] Pages viii–ix.
[28] [1971] A.C. 356.
[29] (1970) 78 C.L.W. 55.

could not commit adultery with any of his wives in a polygamous marriage. The problem arose from the fact that in that case the first marriage had been in monogamous form whereas the second was in polygamous.

All four editions of the *Casebook* maintained the same essential format, though the Notes became more clearly identified in later editions. The work remained a pocket library of cases plus notes, and many a student read the book essentially for the latter. Morris never followed the developing fashion for producing either a teaching tool for the essentially American Socratic case method of teaching, though he had experienced it at Harvard, or a hybrid book half-way between textbook and casebook. Although the life of the *Casebook* spanned nearly thirty years, it was always marginal as a publishing venture, given the relatively small number of students who studied the conflict of laws and the 1968 edition was the last. However, his last book, like his first, was also a casebook—*Cases and Materials on Private International Law*. This was prepared jointly with P. M. North and was published in 1984, very shortly before Morris's death. This joint venture renewed a partnership because Morris and North had conducted BCL seminars together in Oxford for a decade from the mid-1960s. This last book was considerably more substantial than the first *Casebook*, including, for example, far more in the way of statutory and law reform material, marking the great changes in the subject which had come about in Morris's lifetime. But again, though containing a range of notes and problem questions on matters of debate or difficulty, it did not claim to be a surrogate textbook because by then Morris had written his own and North had become the editor of Cheshire's.

Influential though Morris's *Casebook* undoubtedly was on the education of students of the conflict of laws, his wider influence came through his assuming the General Editorship of Dicey's *Conflict of Laws*. Dicey's first edition was published in 1896 and it established itself, and its author, as the leading English authorities. Even then it was a major work of some 800 pages, providing a comprehensive statement of the law in the form of Rules, accompanied by comment and illustrations. After Dicey's death, the work fell into something of an intellectual decline, the main academic interests of the editor who took over from Dicey lying elsewhere, and in 1945 Morris accepted an invitation to prepare the 6th edition; but he soon realized the size of the task before him and concluded by October 1946 that he could not do the job alone. He invited seven other lawyers to join him in the undertak-

ing and thus was initiated the editorial pattern which he maintained for the five editions (6th–10th) for which he was responsible. He was in charge as General Editor with a number of colleagues, ranging between two and the original seven, working with him. Though the original seven included, to his regret, no one who was then a practitioner, this gap was filled in the teams for some of the later editions. The decision was taken at the outset to maintain the essential form of the book established by Dicey—a form of Rule and comment which has today been almost completely abandoned in other legal writing. There is a danger, to which Dicey under Morris's editorship only very occasionally succumbed, that such a format provides the practitioner with an entirely spurious certainty. It says much for Morris's skills that a work in so old-fashioned a form is held by judge, practitioner and academic alike in such extremely high regard. Lord Justice Mann, a member of the team for four editions, has commented:

> John was ever insistent that Dicey is a practitioner's book. If there was doubt about a text he would always ask: 'what would the busy practitioner think?' He made what had become obsolete into, I would suggest, the finest practitioners' book of its time. I had doubts about the structure of 'Rule, comment and examples'. John was adamant that this was a structure useful to the practitioner. On reflection, I am sure that he was right.

Whilst credit must be paid to the members of the various editorial teams, it was Morris who set the standards, and in the parts for which he took personal responsibility he made it, in Guenter Treitel's words, 'a vehicle for legal writing of a degree of incisiveness, subtlety and elegance unsurpassed in any of the great English practitioners' works'. It was no more than his due that the eighth and ensuing editions are known as Dicey and Morris. It is also worth noting that the sheer volume of material included in the work led to the last edition (the 10th) of which Morris was General Editor being published in two volumes.

Dicey under Morris's guidance was re-established as the leading practitioners' work in the Commonwealth, and great care was taken to include a wide range of case law from those jurisdictions, concentrating essentially on Canada, Australia and New Zealand, but not ignoring major developments in the USA. The value of the work to the practitioner outside England and Wales has diminished somewhat in recent times, not because of any lowering of intellectual standards but simply because the

essential uniformity of approach within the common law jurisdictions of the Commonwealth is breaking down as legislation provides more of the means of development and reform. Nevertheless one must agree with the comment of Lawrence Collins, Morris's successor as General Editor, that

> the influence of Dicey . . . grew, because under [Morris's] guidance it kept up with, and anticipated, the great changes in the law caused by the 20th century revolution in communication and travel, and by new social attitudes to family law.[30]

It was not the only work in the conflicts field where Morris worked with a team, for he undertook in co-operation with three colleagues to produce the title Conflict of Laws in the fourth edition of *Halsbury's Laws of England*, the relevant volume of which (No. 8) was published in 1974. However, his other major contribution to the conflict of laws literature, after Dicey and Morris, is his own students' textbook, *The Conflict of Laws*, first published in 1971 with successive editions in 1980 and 1984. It is quite remarkable that, in failing health, he still managed in 1984 to see through to publication not only his third edition, but also his *Cases and Materials in Private International Law*, as well as completing a supplement to the 10th edition of Dicey and Morris just ten days before he died. In the late 1960s, he saw a need for a new students' text, for Cheshire's book was (and still is) a pretty hefty volume for those embarking on the subject. Nevertheless, it was a bold step by both Morris and his publishers to produce another students' book for a very limited market. Nevertheless the gamble (if ever they thought it was) paid off and the book was an immediate success. The book was shorter, and thus cheaper, than Cheshire, less burdened with footnotes and more attractive in appearance. It originated as a shortened version of Dicey and Morris and, indeed, much of it can be traced back directly to discussion of the same issues in the larger work. However, it was more than just a précis—how much more and how much more substantial a task it was to complete can be gathered from the author's comment that 'Law books are like babies: they are the greatest fun to conceive but very laborious to deliver'.[31] In fact, towards the end of the task, Morris was running out of energy and enthusiasm and had to be encouraged to complete the last, very good, chapter on Theories and

[30] Dicey and Morris, *The Conflict of Laws*, 11th edn (1987), p. xxii.
[31] Morris, *The Conflict of Laws*, 1st edn p. vii.

Methods. A deal was struck. He would work to the end of the month. If the chapter was completed by then, fine. If not, it would be abandoned. It was done in time and students have, for nearly two decades, benefited from the best short account in print of the theoretical developments of conflicts theory in the USA during the latter part of this century, 'accomplishing the seemingly impossible task of bringing order out of chaos'.[32]

Morris felt able in a students' book to express his own views on a number of issues more forcefully than in Dicey, given the function of that work in guiding practitioners (and judges), often developing in his textbook approaches he had first put forward in law review articles. Perhaps the best known example of this is his view that, in determining the law to govern liability in tort, the courts should abandon the double-barrelled rule first laid down in *Phillips* v. *Eyre*[33] that the tort had to be actionable in England and not justifiable (later, not actionable) by the law of the place where it was committed. Instead of this rule, the courts should apply 'the proper law of the tort'. This idea was first propounded in his lectures in Oxford just after the war, first found its way into print in a critical case note[34] on the Scottish case of *McElroy* v. *McAllister*,[35] a decision which probably marks the apotheosis of the double-barrelled rule, and culminated in his major article, 'The Proper Law of a Tort', in the *Harvard Law Review* in 1951.[36] His approach undoubtedly influenced the thinking of Lord Wilberforce, at least, in 1971 in *Boys* v. *Chaplin*[37] where the House of Lords abandoned some of the more extreme aspects of the double-barrelled rule, without abandoning the rule itself; but the English courts have not wholeheartedly adopted the proper law of the tort concept (despite apparent acceptance by Lord Denning in 1971 in *Sayers* v. *International Drilling Co.*).[38] On the other hand, the influence of Morris's article on the development of American tort choice of law rules is clear, Chief Judge Fuld citing it in his seminal judgment in *Babcock* v. *Jackson* in 1963[39] which marked the abandonment of the rule in the American Law Institute's First Restatement on the Conflict of Laws requiring

[32] Castel (1972) 50 Can. Bar Rev. 371.
[33] (1870) L.R. 6 Q.B. 1.
[34] (1949) 12 M.L.R. 248.
[35] 1949 S.C. 110.
[36] (1951) 64 Harv. L.R. 881.
[37] [1971] A.C. 356.
[38] [1971] 1 W.L.R. 1176.
[39] 191 N.E. 2d 279 (1963).

the application of the law of the place where the tort was committed. Incidentally, Morris in his lectures took great delight in pointing out that the motorist in that case who had injured his passenger, the plaintiff, by driving into a stone wall was a latter-day 'Stone-wall Jackson'.

Another example might be given of critical examination in his textbook of issues first canvassed by Morris in law journals. In 1969, he subjected the choice of law rules relating to intestate succession to land to characteristically critical analysis, drawing also on his detailed knowledge of both real property and succession law.[40] His argument was that it is unjust for the law of the situs of the land to govern succession to immovables, whilst succession to movables is governed by the law of the domicile. The latter law should govern both issues, thus avoiding the unhappy situation that, for example, a surviving spouse may be entitled to one statutory legacy in one country from the immovables and another in another from the movables.[41] This analysis led him to abandon the then traditional organization of the subject into separate treatment of testate and intestate succession, and to examine them together on the principle that the same law ought to govern both and that that approach in his books might point the judges to the 'right' solution. In the latter he failed (and with a former pupil of his), for in *Re Collens*[42] Sir Nicolas Browne-Wilkinson V-C. felt obliged to allow a widow to take a statutory legacy under the law of the situs of the testator's land (England) as well as her entitlement under the law of the deceased's domicile (Barbados). The judge reached that decision with reluctance, seeing much force in Morris's criticisms but concluding that 'my job is to administer the law as it is now is'.[43]

In his textbook Morris took the opportunity more fully to analyse the problems involved in determining the law governing capacity to contract—long a favourite problem of his in examining the merits of applying the law of the domicile or the proper law of the contract.[44] But some might be forgiven for asking why a problem which so rarely came before the courts should merit such careful analysis. The answer is probably because he regarded it as difficult and thus an interesting exercise in critical

[40] (1969) 85 L.Q.R. 339.
[41] As in *Re Rea* [1902] 1 Ir. R. 451.
[42] [1986] Ch. 505.
[43] Ibid., p. 513.
[44] He had with Cheshire written an important joint article on this latter concept in (1940) 56 L.Q.R. 320.

discussion. On other issues, recent decisions of the courts in which he could see little merit were rarely spared. The confirmation by the House of Lords in *Hesperides Hotels Ltd.* v. *Aegean Turkish Holidays Ltd.*[45] that the rule in the *Mocambique Case*[46] prevented the courts from taking jurisdiction over tort claims involving foreign land was castigated as 'a remarkable (and regrettable) triumph of precedent over principle'. Lord Wilberforce, who was praised by Morris for his earlier decision that English courts could give judgment in foreign currency,[47] received the rough side of Morris's pen when he wrote that anyone who compared Lord Wilberforce's judgments in the two cases 'will feel some astonishment that both judgments were written by the same hand'.[48] Fortunately, the *Hesperides* rule was soon to be abrogated by statute, with the benefit of Morris's assistance.

As has been seen, much of Morris's writing was collaborative, whether law review articles, *Chitty on Contracts*, his last *Casebook*, or Dicey and Morris. Undoubtedly, he enjoyed the team work involved and being, in many instances, leader of the team. He valued the intellectual debate, whether face to face or on paper, that such a process required if his standards were to be met. He made his colleagues examine issues it might have been more comfortable to avoid. A stern taskmaster, he tested every statement by a close analysis of the case law. Sometimes, indeed, his collaborators wondered why they were needed at all for Morris, as General Editor, ensured that he knew at least as much as the 'specialist', and he could and did exert his authority in robust terms. He was, however, fair and open-minded with collaborators and, once he had been persuaded of the logic of some criticism, then he would accept it generously. Much has been said earlier of him as a teacher, but that small group of people who collaborated with him in the preparation of joint works on the conflict of laws, on property law and on contract could also claim to have learnt a great deal from the experience. Rigorous analysis, accuracy of presentation and clarity of expression were all skills he imparted to, and encouraged from, those with whom he worked. Such team work showed him at his best, and he was particularly helpful with encouragement of his younger and less experienced colleagues. A remarkable number of those who

[45] [1974] A.C. 508.
[46] [1983] A.C. 602.
[47] *Miliangos* v. *George Frank (Textiles) Ltd.* [1976] A.C. 443.
[48] Morris, *The Conflict of Laws*, 2nd edn (1980) p. 283.

helped in the preparation of the various volumes he edited have gone on to hold judicial office.

There was also one other group from whom he also demanded high standards—his publishers. Every typescript of his had to be prepared for printing with great care. Woe betide a sub-editor who substituted his or her view for the author's on the correct citation of authorities, especially decisions of the House of Lords. Not only were the proofs of the text read with meticulous care, so also were the proofs of the tables and the index. Sloppy production led to a brisk missive pointing out the errors of the publisher's ways; and he would be much exercised over the general appearance of the book—the kind of typeface to be used for headings in the text, or the appropriate running headings page by page. The best was demanded and expected.

In his attention to detail and the precision of his analysis, he showed many of the virtues of the conveyancer. Indeed his early interest in real property law, and in some of its best intellectual puzzles, would seem to have had a rather narrowing effect on his initial outlook on law. The broader horizons of the conflict of laws did much to change this, whilst still leaving scope for his notable powers of analysis. Nevertheless, limitations remained. Though concerned to ensure the clear enunciation of what he regarded as the correct principles, he was less interested in theory than, say, Cheshire or Dicey. He was anxious in his practitioners' works to provide his readers with clear and above all accurate statements of the law, and with practical solutions to potential problems. He did not easily address the broader theoretical or philosophical aspects of his chosen topic. His discussion was centred in the English and Commonwealth cases. He was happy to examine theoretical developments in the USA but, then, primarily through decisions of the courts. Although he formed close relationships with a number of German refugee scholars such as Martin Wolff, Francis Mann and, especially, Otto Kahn-Freund, he had few other contacts with, or little interest in, civil law developments in the field. He was unmoved by interest shown in his writings by the senior judiciary in France or Germany, though he never failed to note a reference from a puisne judge in a minor common law jurisdiction. It is paradoxical that a man who loved to visit continental Europe should have been so uninterested in its law.

III

No one is likely to describe Morris in political terms as other than conservative, yet his approach to legal issues was in many respects both radical and liberal. He was not one to propose the creation of a whole new edifice; to that extent he was orthodox. He would be prepared, however, to recommend a complete refurbishment of the existing structure. Within those constraints, he was a keen advocate of reform of the law, believing in equality of opportunity before the law. He achieved change in the law in a variety of ways—through the influence of his writings and through informal advice to judges; but his most direct contribution to the cause of law reform was made through advice he was asked to give to the Law Reform Committee and to the Law Commission, the first in the area of property law and the second on issues of the conflict of laws. The reform of the law on perpetuities shows his influence at work in two ways. The first edition of his joint monograph, *The Rule Against Perpetuities*, was published in 1956 at about the same time as the Fourth Report of the Law Reform Committee on Perpetuities.[49] Having exposed the absurdities of the law with wit and erudition, the authors had no doubt that legislative reform provided the only solution:

> It is scarcely credible that in the second half of the twentieth century testamentary dispositions offering no threat to the public interest, and reasonable bargains between business men dealing with each other at arm's length, should continue to be struck down in the name of public policy. In England and in most other jurisdictions, the precedents are so numerous that legislation is now the only cure.[50]

At the same time Morris was working to provide a legislative solution. When the Lord Chancellor referred this issue to the Law Reform Committee in 1954 Morris was co-opted as a member of the sub-committee set up to tackle the problem. There seems little doubt that he was a key member of this sub-committee and a powerful influence on the 1956 Report. The fruits of this work are to be seen in the Perpetuities and Accumulations Act 1964, which was subjected to detailed examination in 1964 by Morris and H. W. R. Wade in 'Perpetuities Reform at Last'.[51] Whilst the authors approved of most of the statute—hardly surprising, given its origins—trenchant criticism

[49] 1956, Cmnd. 18.
[50] *The Rule Against Perpetuities*, 2nd edn (1962), p. vi.
[51] (1964) 80 L.Q.R. 486.

was expressed of the Government's decision to reject one major plank of the Law Reform Committee's approach. The rule against perpetuities as amended by the 1964 Act provides that any future interest in property is void if it must vest after the perpetuity period has expired, and the period is determined by reference to 'lives in being' plus twenty-one years, or a fixed period not exceeding eighty years. This statement embodies the 'wait and see' principle, i.e. the interest is to be treated as valid unless and until it becomes established that the vesting must occur, if at all, after the end of the perpetuity period. Morris supported the change to the 'wait and see' principle but was firmly of the view, as was the Law Reform Committee, that such change did not require any change to the category of 'lives in being' under the rule. He was critical both of the decision to include in the 1964 Act a new definition of lives in being, and of the definition itself. This critical approach finds continued support today in Megarry & Wade, *The Law of Real Property*, where the definition is described as being 'both more complex and less rational' than the reforming legislation of other countries, and as 'a fertile source of problems and obscurities'.[52]

When the Law Commission was established in 1965, its First Programme included the reform of the rules for the recognition of divorces, annulments and adoptions.[53] Morris provided the Commission with 'an exhaustive memorandum . . . covering the whole field',[54] and served as consultant to the Working Party set up to examine the Hague Draft Convention on the Recognition of Foreign Decrees of Divorce and Legal Separation. This work culminated in the Commission's Report in 1970 on the Hague Convention[55] which proved to be the forerunner of the Recognition of Divorces and Legal Separations Act 1971 (substantially re-enacted as the Family Law Act 1986, Part II). Morris played an important role in placing the English recognition rules on a clear statutory basis, abandoning the undesirably vague House of Lords' decision in *Indyka* v. *Indyka*[56] which had allowed recognition on the basis of 'real and substantial connection', and adopting as broad an approach to recognition as was compatible with the Hague Convention.

[52] 5th edn (1984) p. 255.
[53] Law Com. No. 1, Item XII (1965).
[54] Law Com. No. 4, para. 88 (1966).
[55] Law Com. No. 34.
[56] [1969] 1 A.C. 33.

In 1967, the remit of the Law Commission was expanded to include the whole of family law, including its other conflict of laws aspects. One of these was polygamous marriages on which Morris had already written at length,[57] and his survey of the topic provided the Commission with the basis of their Working Paper (No. 21) and eventual Report.[58] Statutory reform followed in the Matrimonial Proceedings (Polygamous Marriages) Act 1972 (now the Matrimonial Causes Act 1973, section 47) which, as Morris had argued in 1953, abandoned the earlier case law restrictions, following from *Hyde* v. *Hyde*,[59] on the English courts providing relief if a marriage was actually or even only potentially polygamous. Morris, through his advice to the Law Commission, had achieved a far more liberal regime under which the polygamous nature of the marriage was irrelevant to the jurisdiction of the court in granting matrimonial relief, even in the case of divorce on the basis of adultery. He was a strong supporter of the various steps taken to afford recognition to polygamous marriages unless there is some strong reason to the contrary: 'This reason has to be very strong indeed before recognition will be denied. For it would not facilitate the integration of immigrants into English society if they were to be denied the elementary rights which native-born English people enjoy as of course.'[60]

The third piece of liberal reforming legislation in the field of conflict of laws and matrimonial causes for which Morris could claim considerable credit was the Domicile and Matrimonial Proceedings Act 1973. His contribution here was two-fold. He advised the Departmental Committee whose unpublished report on domicile formed the basis of the first part of the 1973 Act; and he again acted as a consultant to the Law Commission in the preparation in 1970 of the Working Paper (No. 28) on which the Commission's final Report[61] and the latter part of the 1973 Act on matrimonial jurisdiction were based. The liberalizing influence can be seen at work once more. The major reform of domicile which was achieved was to abolish the rule which required a married woman's domicile to be dependent on that of her husband—described by Lord Denning in 1963 as 'the last

[57] (1953) 66 Harv. L.R. 961.
[58] Law Com. No. 42 (1971).
[59] (1866) L.R. 1 P. & D. 130.
[60] *The Conflict of Laws*, 3rd edn (1984) p. 186.
[61] Law Com. No. 48 (1972).

barbarous relic of a wife's servitude'.[62] Morris's role in this reform was highlighted by Lord Scarman in his foreword to *Contemporary Problems in the Conflict of Laws*:

In my days as Chairman of the Law Commission, I had good reason to be truly grateful for the wisdom of his advice when the Commission was considering the problem of the domicile of married women. The liberation of women from this badge of servitude, and from its accompanying injustices ... owes much to the vigorous advice we received from John Morris. He had also one glorious quality as an adviser, he was never afraid to disagree.

The rules of divorce and nullity jurisdiction to be found in the 1973 Act also accord clearly with his concern that there should be equality of treatment of husband and wife, which the old law did not provide, and that the subterfuges of the past be abandoned in favour of a simple rule based on one year's habitual residence, as well as on domicile. There was, however, one aspect of the 1973 Act with which he always remained unhappy, not least because of the way in which its introduction came about. The jurisdictional rules laid down in the Act are uniform throughout the United Kingdom and this led to the introduction of provisions to require a court in one part of the United Kingdom to stay proceedings if similar proceedings had been started in a court in a more appropriate part of the United Kingdom. The underlying purpose of these provisions was to meet Scottish fears that the new liberal jurisdictional rules, coupled with the then more liberal English attitude to the grounds of divorce and financial relief, would lead to Scottish people petitioning for divorce in England. Morris objected to the regime of mandatory stays eventually hammered out between the Law Commission and the Scottish Law Commission. He much preferred the more flexible approach of a discretion and took mischievous pleasure in pointing out that the strict rules laid down would, in some cases, reach the wrong result. What he objected to most of all, however, was that this issue and its proposed resolution were never exposed to wider debate than just within the two Commissions: 'These proposals were never canvassed in the Working Paper which preceded the Report, and were thus never submitted to expert public scrutiny as the Law Commission's proposals usually are.'[63]

His advice to the Law Commission was not limited to the

[62] *Gray* v. *Formosa* [1963] P. 259, 267.
[63] *The Conflict of Laws*, 3rd edn (1984), p. 218.

projects on which he acted formally as a consultant. In the 1970s and early 1980s, there was a continuing flow of Working Papers from the Commission on conflict of laws issues on which he provided full and trenchant comments, pointing out errors of law and urging the Commission towards workable solutions, whilst consistently adopting a liberalizing approach to the problem in issue.

His last major contribution to law reform resulted, ironically, from the United Kingdom's entry into the EEC, ironically because he had no obvious sympathy with continental civil law or lawyers. Entry into the EEC required accession by the United Kingdom to the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters and, after significant amendments to that Convention had been negotiated in the Convention of accession to it, legislation was required in the United Kingdom to implement these new rules on jurisdiction and recognition. The task of advising the Government on the form and scope of the new legislation (which became the Civil Jurisdiction and Judgments Act 1982) was entrusted to a Working Party, chaired by Lord Justice Kerr and of which Morris was a member, and an active one at that although by then in far from robust health. He was a firm supporter of the decision that, other than in Scotland, the existing jurisdictional rules should continue to apply to cases falling outside the scope of the Convention. England was not going lightly to abandon its familiar rules—but the opportunity was to be taken, again with Morris to the fore, to reform them. He could claim much credit for the reorganization and reformulation of Order 11 of the Rules of the Supreme Court, introduced at the same time as the 1982 Act, and for the fact that that Act contained reforms of the common law not required by accession to the Brussels Convention. Important examples of these are the conferring of jurisdiction over proceedings for torts involving foreign land (section 30)[64] and allowing a defendant to object to the jurisdiction of a foreign court without being assumed to have submitted to the jurisdiction so that the foreign judgment would have become enforceable in England (section 33). This latter provision abrogates the 1976 decision of the Court of Appeal in *Henry* v. *Geoprosco International Ltd.*[65] whose unpopularity with the legal and commercial community Morris

[64] Abandoning elements of the *Mocambique Rule*, mentioned above, p. 465.
[65] [1976] Q.B. 726.

had earlier described and whose demise he had predicted because 'pressure for its reversal by statute seems likely to become irresistible'.[66]

He made a major contribution to the development of case law, mainly though not exclusively in decisions on the conflict of laws. His published works, particularly Dicey and Morris, exerted a powerful influence on judicial law making and there were a number of occasions when, in the absence of case law, judges had to decide cases by reference to the academic authorities—Morris and his own mentor in the conflicts field, Cheshire. One of the most striking of these cases is *Re Egerton's Will Trusts*[67] in 1956 where Roxburgh J. had to decide whether an assignment of matrimonial property where there was no marriage contract should be governed by the law of the husband's ante-nuptial domicile (Morris) or the law of the intended matrimonial domicile (Cheshire). The judge approached 'this controversy between Dr. Morris and Dr. Cheshire with that caution and respect which they both deserve', but concluded: 'I adhere to the view expressed by Dr Morris.'[68] Not always, however, did the argument come down on his side. In 1973 in *Radwan* v. *Radwan (No. 2)*[69] Cumming Bruce J. preferred the Cheshire intended matrimonial home test to govern the issue of capacity to enter a polygamous marriage; but the judge anticipated correctly the Morris criticism which followed, when he concluded his judgment thus: 'I do not think that this branch of the law relating to capacity for marriage is quite as tidy as some very learned authors would have me believe, and I must face their displeasure with such fortitude as I can command.'[70]

Cheshire was not only his only adversary in the pages of the Law Reports. Late in his life, the House of Lords in *The Hollandia*[71] (1983) was faced with a conflict of opinion between him and Dr F. A. Mann over the scope of the Hague-Visby Rules scheduled to the Carriage of Goods by Sea Act 1971. The essential issue was whether the Rules were to be applied by an English court in all cases, as overriding statutory provisions, or only if English law was the proper law of the contract in question. Put more directly: could the parties contract out of the

[66] *The Conflict of Laws*, 2nd edn (1980), p. 411.
[67] [1956] Ch. 593.
[68] Ibid., pp. 603, 607.
[69] [1973] Fam. 35.
[70] Ibid., p. 54.
[71] [1983] 1 A.C. 565.

Rules? Mann had said they could;[72] Morris had denied this.[73] In the House of Lords, Lord Diplock was rather coy in accepting Morris's view, simply stating that he was unable to accept the approach supported by Mann (whom he described as 'a distinguished commentator') and in so acting was, therefore, 'apparently in respectable academic company'.[74] Lord Denning (like Morris, an Honorary Fellow of Magdalen) had been far more direct in the Court of Appeal when, in preferring Morris's view, he said:

In reaching this conclusion, I should like to express my indebtedness to the articles and books ..... of Dr. J. H. C. Morris whose contribution to the conflict of laws has excelled even that of his great predecessor, A. V. Dicey.[75]

Less public is the direct influence that Morris had on the decisions, and the form of the judgments, of a number of judges, again especially in the conflicts field. Judges, as well as counsel, would turn to his writings, and particularly to Dicey and Morris for advice and assistance, often in preference to judicial *obiter dicta*. Lord Scarman has made this clear:

Dicey under his editorial hand has proved to be much more than an accurate reflection of the law as it developed. John Morris's critical genius ensured that each edition for which he was responsible should develop the law. The depth and range of his learning coupled with his gift of critical analysis brought the flattering consequence that what Dicey said on a point mattered as much to the judges who made the case law as did their case law to the editor of *Dicey*. John Morris's influence on the case law has, therefore, been profound. What counsel would dare to argue, or what judge would wish to decide, a point (for instance) relating to trespass to foreign land, where title is in issue, without consulting *Dicey*? Who would dare set new limits to the 'Mocambique rule' without, in effect, consulting John Morris?[76]

There is also evidence from a number of senior judges that they would turn to him privately for assistance when faced with a difficult conflicts issue in a draft judgment. Interestingly, Morris had himself appeared critical of such private influence when, in 1970,[77] he had explained (rather disparagingly) the support of

[72] (1972–3) 46 B.Y.B.I.L. 117.
[73] (1979) 95 L.Q.R. 59.
[74] [1983] 1 A.C. 565, 577.
[75] [1982] Q.B. 872, 884.
[76] *Contemporary Problems in the Conflict of Laws* (1978) p. 1.
[77] (1970) 19 I.C.L.Q. 424, 426.

Lord Greene MR in *De Reneville* v. *De Reneville*[78] for Cheshire's intended matrimonial home approach to capacity to marry by reference to the fact that both Greene and Cheshire were at the time Fellows of All Souls College. In fact Cheshire maintained that Greene greeted his views, expressed over lunch, 'with a stony silence'!

IV

Morris was a very large man, tall with a distinguished presence, by no means lessened by increasing girth with the years, and fair-haired (at least until middle age). He had strong views, vigorously expressed; very clear likes and dislikes; with colleagues, he could be contemptuous of what he regarded as mediocrity and had no inhibitions in expressing that opinion, not surprisingly attracting the resentment of the objects of his comments. On the other hand, he could be firm and resolute in his friendships. At times, however, he may well not have realized how crushing his comments could be not only to his pupils but also to his friends. This is best summed up by the comment of Professor Tony Honoré:

> I doubt if he realised how he intimidated others; the impression he gave, despite meticulous courtesy, especially to women, was that one stood in constant danger of receiving some annihilating remark should one say something ill considered at the lectures or in the seminars which he conducted. I remember in the fifties Jack Butterworth remarking that the world must look very different from the lofty height from which John looked down on it; there was some truth in this, but I doubt if John realised it.

He had the envied ability of making so much seem so easy. In terms of scholarship, the public image, or at least that given to his pupils, was of never appearing overburdened, making in the words of Professor Stephen Cretney 'a stately and leisurely entry to his rooms in New Buildings at around 10 a.m. and an equally leisurely and stately departure at around 4'—a timetable carefully calculated to avoid the Oxford rush hour. In fact, he put in long hours of meticulously detailed work of research, especially through the case law of the Commonwealth. Every two or three months, the stack of recent unbound copies of law reports and statutes outside his carrel in the Bodleian Law Library would

[78] [1948] P. 100.

bear witness to his careful combing through the latest developments in the common law world.

The formidable and confident external appearance concealed an inner man prey to occasional anxiety. Morris's pupils would have been surprised to hear, for example, that, in his early years, he was most apprehensive about lecturing, finding it 'an agony'; that when he returned to Oxford at the end of the war he expected to face disciplinary problems with his ex-service pupils, asking: 'what do I do with people who had been drunk in every bistro from El Alamein to the Sangro?' He could also, like lesser men, be assailed by real doubts on legal matters, and be anxious to seek the views of those working in the same field. This may, perhaps, explain why so much of his published work was written in collaboration with others, albeit with Morris very much setting the pace. Indeed, to his closest collaborators this underlying vulnerability was an appealing aspect of his character, compensating for some of his more acerbic comments on their efforts.

He was a remarkable correspondent. His letters, often on several small sheets of blue notepaper, crammed with small handwriting in darker blue ink, could be as entertaining, careful and accomplished as his published work, and would cover the whole range of his interests. They confirmed the overriding impression of the man himself. If the letter related to some joint scholarly endeavour, then it was more likely to be typed with numerous, numbered points, indicating further authorities that might be considered, infelicities of style that might be remedied, and arguments that, regrettably, were wrong.

Many images of Morris connect him with his habit of smoking (cigarettes as well as a pipe), as in Professor David McClean's:

> The college Law Library, a place for that delightful but inefficient combination of conversation and work which undergraduates so enjoy. The door swings slowly open, and a large frame enters and moves to a corner table by the window. An unnatural quiet breaks out. He reads a dozen volumes, it seems, in as many minutes, then processes out. The library relaxes. The smoke gradually clears.

On at least one occasion, one of his Magdalen colleagues had to douse the smouldering fire he had left in his wastepaper basket as a result of knocking out his pipe ash into it. A car journey from London to Oxford in his Rover on a winter's evening could be a chilling experience. The driver's window would be wide open to allow the smoke to disappear; the cold Thames Valley night

came in instead; and this accompanied by his uncomplimentary comments on the abilities of the driver of virtually every vehicle that was encountered.

Until late in life, his principal hobby was sailing. He started young, about eight years old, being taught by his father, at the family holiday home on the Isle of Wight. He graduated to large boats, and when he left Oxford his father gave him an old Falmouth quay punt which he sailed to Holland and France, selling it to pay for 'Mercy Jane' bought in 1939 and on which he spent his honeymoon. Neither of these boats had engines, an appendage which he despised. After the war, he and his wife sailed extensively—to the Bay of Biscay, the west coast of Scotland, in the Baltic, round Ireland. In 1957, in partnership with friends, he bought a new boat, a 14 ton Gauntlet 'St. George' (this time with an engine and radio receiver) which they sailed for a decade until the financial burdens became too great, though Morris continued sailing chartered boats for some years thereafter.

In sailing, as in so much else, Morris was highly successful. Pilotage was his great fascination—the navigation of intricate passages and exploration of remote anchorages. He was elected a member of the Royal Cruising Club in 1934, winning a variety of trophies, including the Challenge Cup in 1946 for a voyage round Ireland, the Romola Cup in 1935, 1939 and 1947 and the Claymore Cup in 1963 and 1966; but his contribution to sailing was more extensive than these successes. The accounts of his cruises, carefully and elegantly written up, are published in the Journal of the Royal Cruising Club and make fascinating reading, but he was also editor of the 'Sweden and Finland Port Information Folio' for members of the Royal Cruising Club. To do this he had translated into English (at his own expense) the equivalent work published by the Finnish Cruising Club, but nevertheless relied on his own first-hand experience of those waters.

The large boats that he sailed required a crew, and such assistance was to be found amongst his pupils or Oxford colleagues. Here, as elsewhere, he could be a hard taskmaster. Lord Justice Fox, a former pupil, declined an invitation to crew for him: 'I was sufficiently aware of my own shortcomings to know that while my friendship with John might not survive the refusal, there was no possibility at all that it could survive the acceptance.' One distinguished lawyer, and former pupil, who did regularly crew for Morris was Lord Keith of Kinkel. He has

written an account of the experience in *Graya*,[79] pointing out that 'All his cruises were executed in bracing North European waters. He had no use for the Mediterranean, saying of the yachtsman there that he spent all his time tied up taking an interest in nothing but the wife of the man in the next boat'. His exact memory and great breadth of sailing experience meant that he could provide information on provisioning of a most varied kind—such as the best island off the Irish coast to buy lobsters, where to eat in Dieppe, or the best supplier of gin on the Kiel Canal; for he had the true sailor's appreciation of the restorative qualities of gin. Happily for his crew, the sun fell below the yardarm quite speedily—certainly by 6.30 p.m. Sailing is a time-consuming pastime and Morris spent many summers at sea. Nevertheless his scholarly activities appeared in no way diminished by this—for he was fond of saying that he worked on Christmas Day in order to be able to sail all summer.

Although as a lawyer, he was out of sympathy with, and had little interest in, the development of private international law in continental Europe, he much enjoyed European travel. If not sailing in northern waters, he would tour the continent by car and was a ready source of addresses of good hotels in France. In this he may have been influenced by his father who was said to travel from Folkestone to Boulogne for Sunday lunch. Yet he would take a ready supply of English sliced bread to avoid having to eat baguettes, or would brew tea on a camping stove in Biarritz rather than consume French (non-alcoholic) drinks.

He was ever concerned in his writing to ensure complete accuracy of detail and this same quest for perfection was to be seen in whatever else he did. Total mastery was to be achieved over every endeavour. He much enjoyed Gilbert and Sullivan and made a great impression when at the Harvard Law School not only as a lawyer but also as operetta expert. Indeed his sailing companions might be entertained by a solo rendition of almost the whole of *Trial by Jury*. Alternatively, there might, when near the Frisian Islands, be detailed discussion of the minutiae of Erskine Childers's *The Riddle of the Sands*, which again he could quote almost verbatim. Similar expertise was to be found in discussing such diverse topics as cricket or railway history. This last proved to be particularly important in his book of essays (with contributions from Dr A. D. MacIntyre) *Thank you Wodehouse*, published in 1981 to mark the centenary of the birth of

[79] Vol. 88, pp. 39–41.

P. G. Wodehouse, and described as a 'real masterpiece'. In this, he applied all his intellectual and analytical skills to solving a variety of mysteries which have, no doubt, long worried Wodehouse critics. They included such problems as 'How old was Bertie?', 'The Domicile of Agnes Flack', and (the one where knowledge of the railway system and timetables proves crucial) 'Where is Market Blandings?'. The nature of the book has been described thus by Guenter Treitel:

> The argument has a delightful quality of self-parody, the familiar inevitably being achieved with tongue very evidently in cheek and in combination with those touches of humour that, in his legal works, are largely banished to footnotes and indices.

Morris applied the same skills to the work of Dorothy L. Sayers, but only some of those essays were published.

V

John Morris died in Suffolk on 29 September 1984. The world of legal scholarship mourned the loss of a man of formidable intellect, great industry and the ability in his writing to provide that which eludes many lawyers—the combination of accuracy and elegance of style. His authority as scholar and author was such that he has set standards for others to aspire to. In the words of Lord Keith of Kinkel, to his friends he 'was a fascinating mixture of stormy clouds and warm sunshine.... The force of his personality made the storms quite terrifying on occasion, but the sunshine more than made up for that. Everything he did he did to the utmost of his ability'.[80] To the world of the law, he was a highly practically minded common lawyer and, as such, without compare.

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