being what it is, it might, in practice, be difficult to prevent excessive centralisation under federal control. The present structure, whatever its shortcomings, does at least compel a certain measure of decentralisation, so necessary for promoting interest in local industrial government.

D. C. THOMSON*

Jurisprudence: Men and Ideas of the Law, 1953, by Edwin W. Patterson, A.B. (Missouri); LL.D. (Hon.) (Missouri); S.J.D. (Harvard), Cardozo Professor of Jurisprudence, Columbia University; pp.xiii and 594 and (indexes) 55. Brooklyn, U.S.A., The Foundation Press, Inc. $7.50.

Jurisprudence has not been in the past one of the subjects commonly taught in United States Law Schools. Even today, after a resurgence of interest in jurisprudence as a field of study, there is a majority of Law Schools which offer no course to their students under that head, and in the schools where a jurisprudence course is offered, it appears as an elective course. This is in marked difference from the practice of the English law schools; but the difference does not stop there. Even in those schools where jurisprudence is offered as a course, the substance of the course tends to be very different from that found in the jurisprudence courses taught in English universities. Times are changing no doubt, but in England the jurisprudence courses usually consist of an introduction to the schools of jurisprudence, and of an Austinian-type analysis of the English legal system and its content of principles and rules. That such an analytical approach can survive in the United States is evidenced by part of Professor Patterson's book; but, in the main, the courses taught under the heading of jurisprudence in the United States are more critical, more sociological, and much more influenced by the early work of Roscoe Pound and of the work of the so-called realists in the 'thirties, than is so in England.

There is a number of extremely valuable collections of "readings in jurisprudence" published in the United States for the use of teachers in jurisprudence. Such works are used for teaching by a sort of modified "case method".[1] So far as this reviewer is aware, however, the only text book on jurisprudence published in the United States (in this century at least) for law school purposes before *Men and Ideas of the Law* appeared, was Bodenheimer's *Jurisprudence*, which appeared in 1940. Professor Patterson has set out to supply what is clearly a felt need at Columbia and, it is assumed, is a felt need at many other American law schools. It must be emphasized at the outset that his book is a students' text book.

Professor Patterson has been claimed as a realist. Insofar as there is much evidence that the work of Dewey and of James has provided the framework for much of Professor Patterson's thinking, it is supposed that there was some ground for those claims. At the same time, throughout this book the author shows his attraction to a theory about law which can only be described as imperative; one which John Austin would have little difficulty in understanding.

The book as it now appears is the result of more than a decade of experiment in conducting a course in jurisprudence. It is the product of some thirteen years of working with materials in class which have until now been used at Columbia in mimeographed form only.

The broad structure of the book may be simply described. There are five parts, and the first and introductory part deals with questions of terminology. It is headed "The Province of Jurisprudence", and in it the author attempts to

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* B.A., LL.B. Senior Lecturer in Law, University of Sydney.

[1] J. Hall, *Readings in Jurisprudence* (1938); S.P. Simpson and J. Stone, *Law and Society* (1950); M. R. Cohen and F. S. Cohen, *Readings in Jurisprudence and Legal Philosophy* (1951).

state his view of the relations of jurisprudence with philosophy and the sciences, including the other social sciences. The second part, entitled "What is Law?" examines the various commonly asserted definitions of law and treats of the character of rules which are called laws and of the problem of sanctions. It is perhaps in this part that the attraction to an imperative theory of law mentioned above is most clearly revealed. The third part, entitled: "What is the Law?" treats in rather short compass (140 pages) the matter attracts most of the attention in a traditional English jurisprudence course. Here the author attempts to state his views of the legal system, of the rules which are found in legal systems, of the content and source of those rules, and at the same time to say something of the diverse other views about those things. The fourth part, entitled: "What should be the Law," treats of legal philosophy and legal philosophers. Here, in some 230 pages, Professor Patterson sets out to do what Friedmann in "Legal Theory" did in his first 280 pages, but with rather less success than Professor Friedmann. The fifth and last part is short and is concerned with "The Judicial Process".

Perhaps Professor Patterson has done for the American undergraduate what Professor Paton did for the English undergraduate in jurisprudence. But he has not covered as wide a field as Professor Paton, and he has not been as careful at Paton to stand on neutral ground. At the same time, the book reveals Professor Patterson's philosophy as an eclectic one. The author admits to this.[2]

It would be wrong to criticize this work as though it were a major thesis attempting to answer at a high level some of the major problems which trouble lawyers. It is after all a students' text book. Its main aims, therefore, are introductory, informative, and clarifying ones. In those aims the book is very largely successful.

It is not an exciting book. Perhaps it would be asking too much to say that it should be one. It has the virtue for the most part of clarity and of simplicity. At times, it reveals an alarming superficiality. Why should the easy notion that Austin's command theory of law is to be explained by the fact that Austin had for a short period a commission in the Army still have a place in a text book on jurisprudence?[3] Why should Kant's four o'clock walk provide almost the sole insight into his character to explain the precision of his thought?[4] Such sleight of hand should be unnecessary for a work of this kind. But these are almost carping criticisms.

Perhaps a more important criticism is that frequently the author shows a lack of insight into a vital aspect of a topic with which he is dealing. Sometimes a surprising lack, in the light of the fact that the author himself is a practitioner. For example, he says on p.549 that "day by day, lawyers argue cases in appellate courts as if the law were certain and established, and appellate court judges write opinions which state the logical grounds for their decisions in legal rules or principles, treated as if well settled. In every such case, one lawyer was wrong; one lawyer's law was not as certain as he thought it to be".

This ignores what is a truism: that the lawyer's task in the court is one of persuasion, and many times the lawyer whose law is said by the author to be wrong did not suppose his law to be right or wrong. He was set a task to persuade a court in one direction or another, and he went about it with professional skill. This element of persuasion should be remembered in describing any aspect of the judicial process.

To discuss the many questions which the author has treated is impossible in a review of this kind. Let it be said that there is a great deal here of real value, both to students and to teachers. There is a great deal that reveals both experience in teaching a jurisprudence course and care and thoughtfulness in

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[2] E. W. Patterson, *Jurisprudence: Men and Ideas of the Law* 556-57.
[3] *Id.*, at 84. [4] *Id.*, at 376.

the preparation of matter to be put before a class. In most respects it is a very good text book. It is perhaps of particular interest to a non-American teacher, because (although as Professor Fuller says in his review article in the *Journal of Legal Education*[5], the book is not as American as "blueberry pie") it is a book by an American who concentrates most of his attention on American legal philosophy and reveals best the American attitude to the legal system, rather than Continental or traditional English attitudes.

If a feeling of dissatisfaction is left after reading the book, it is not because it fails to hold the interest of the reader, or because the work done is not of a high standard, but because the author has revealed sufficient of himself in his criticisms to make the reader feel that the thinking to support the author's asserted views should go further and be more satisfying. Most of the merits, one feels, lie in the careful and in the main accurate summarizing and sorting of other people's theories and opinions, rather than in explanations and theories which the author is confident to assert for himself.

Jurisprudence: Men and Ideas of the Law should not be thought of as a substitute for suitably chosen "readings" in jurisprudence, to be used in class discussions. If it were so thought of and were used as some text books have been used in the past, i.e., as matter to be 'learned', it would prove to be a disservice to American legal education. If, however, it is used as a synthesizing and clarifying tool by a class bent on discussing selected readings from original works, it should prove of great value.

D. P. DERHAM*

Negligence on the Highway by O. C. Mazengarb, M.A., LL.D., 2nd ed. 1952, Butterworth & Co. (Australia) Ltd., lxiv + 344pp., £3/5/0 in Australia.

When Sir George Rich in 1939 spoke of the "development which the law of tort has undergone in its progress towards its present amorphous condition[1]," he did rather less than justice to the work of those judges and text-book writers who have attempted to place new doctrines and novel situations in the field of tort on a proper basis of principle. Amongst the learned authors of text-books, the work of Dr. Mazengarb on the subject of highway negligence deserves serious attention. In the second edition of his *Negligence on the Highway*, he has set a high standard for those writers who set out to perform the dual function of covering a branch of the law in a manner worthy of the legal scholar and of providing for legal practitioners a useful guide for the preparation and conduct of cases in the Courts.

Written in New Zealand, but with a judicious use of statutes and of the recent case law of Great Britain, Australia and other Dominions, the book covers virtually every aspect of the subject indicated in the title. Commencing with the theoretical and historical basis of liability (trespass, case, negligence), Dr. Mazengarb proceeds to a discussion of the principles of vicarious liability. Each situation where the liability of the owner of a motor vehicle for the negligence of his servant is in question is illustrated by decided cases. The decisions in *Twine* v. *Bean's Express Ltd.*[2] and *Conway* v. *Geo. Wimpey & Co. Ltd.*,[3] recent examples of non-responsibility to gratuitous passengers, are discussed. Unfortunately, the book was published before the decision of the Court of Appeal in *Ormrod* v. *Crosville Motor Services Ltd.*,[4] a decision

[5] (1954) 6 *Journal of Legal Education* 457.

* M.B.E., B.A., LL.M. Professor of Jurisprudence, University of Melbourne.

[1] *Chester* v. *The Council of the Municipality of Waverley* (1932) 62 C.L.R. 1.

[2] (1946) 1 All E.R. 202, 62 T.L.R. 458.

[3] (1951) 1 All E.R. 363.

[4] (1953) 2 All E.R. 753.