the mentally ill and the proper relationship between mental disease, the criminal, and the administration of criminal justice. All in all, "Psychiatry and the Law" is both a useful and practical text for the journeyman trial lawyer, and an interesting source of ideas on suggested public policy in a difficult and poorly understood field.

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JURISPRUDENCE: MEN AND IDEAS OF THE LAW. By Edwin W. Patterson. Brooklyn: The Foundation Press, Inc., 1953. Pp. xiii, 649. $7.50.

This work is described by the author, who is Cardozo Professor of Jurisprudence at Columbia University, as an invitation as well as an introduction to jurisprudence. As indicated in the preface,[1] the method adopted is to analyze and appraise the general theories about law that have been most influential on the law of the United States of America; in many instances, sketches are given of the personality and the social environment of the men by whom these theories have been contributed to current legal thought. The book has the merit of extending jurisprudence much beyond the conventional limits of the English analytical school; a major part is devoted to legal philosophy, and concise consideration is given to the relations of legal theory to philosophy generally and to the social sciences. Nevertheless, the scope of the subject matter is ostensibly foreshortened in time, space, and substance to the general ideas about law which have been influential in the contemporary American scene.

It is somewhat incongruous thus to project a study of *general* legal ideas, if not in local terms, at least in a *local* perspective. In some measure, this may be justified as the author's prerogative. But it is also pertinent to note that this work originated to meet the needs of the required course in jurisprudence introduced at Columbia in 1938, being preceded by four mimeograph editions in which it had a "thorough tryout." As such, it doubtless also reflects the extent to which the horizons of legal education in these latter days, in the United States as elsewhere, have tended to coincide with the national boundaries. It is a question how far the course in jurisprudence, which provides an opportunity to enlarge the interests of future members of the legal profession in the more fundamental aspects of justice, should make concessions of this nature to the professional interest in positive law. In justice to the author, who recognizes that the viewpoint adopted approaches that of a cultural anthropology, it should be added that, despite the professed national bias, a majority of the figures and ideas treated in the book are—as is inevitable—not native American. This obviously is desirable on various counts. As the distinguished scholar, Munroe Smith, who inaugurated the study of jurisprudence at Columbia on the broad basis of comparative legal history and legal science, once observed, a merely national science of law is a contradiction in terms. And assuredly, in this modern era of progressively integrated international relations, it is incumbent on those who in the name of jurisprudence are elected to lead the legal profession to envisage their task in correspondingly cosmopolitan terms.

"Jurisprudence," as defined by the author, "consists of the general theories of, or about, law."[2] Following a preliminary consideration of the Province of Jurisprudence in Part I, in which the meanings of the term, the relations between law and philosophy, and the significance of the several social sciences for

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1. p. vii.
2. p. 2.

the jurist are examined, the treatment is directed to three central topics: What Is Law? (Part II); What Is the Law? (Part III); What Should Be the Law? (Part IV); to which is appended a chapter on the Judicial Process (Part V).

With respect to the first central topic, What Is Law?, a survey of the "basic" characterizations in ideal, institutional (historical or sociological), imperative, and social-control conceptions of law is followed by chapters exploring three dominant features of law, its generality, its normative character, its authority or sanction. Within this classification, a variety of subordinate questions are covered, such as various representative views on the nature of law, the function and logical implications of the rule of law, the meanings of rules, norms, and operative facts, the authority and sanction of law, the legal status of international law, and the like. In general, the position taken by the author in considering these matters differentiates ethics from law on the ground that law includes a variety of values without ethical content and defines law by relation to the state (the definition of which is left to political science) as a body of legal norms prescribing the official conduct that should follow stated operative facts, which has the authority and sanction of the state.

Part III deals with the sources, forms, and systemic relations of state law. Here, after a brief chapter on the Uses of Law by the profession and the layman, the various sources of law are analyzed: legislation, case law, opinions of experts, principles of morality, societal facts. Two following chapters deal, respectively, with legal system and terminology (in which special attention is given to the hierarchies of legal norms propounded by Kelsen and Pound and the logical analysis of legal terminology), and with the system of stare decisis, notably as conceived by Oliphant and Goodhart.

Part IV is concerned with legal philosophies, with the law that should be; it occupies over one third of the volume and is in certain respects the most valuable part. After a brief reference to the uses of legal philosophy, consideration is given to the contributions of: natural law; Kant and the neo-Kantians; the historical and evolutionary theories of Savigny, Maine, Ames, Spencer, Hegel and Marx; utilitarianism (Bentham and Ihering); pragmatism (James, Dewey, and Holmes); Pound's sociological jurisprudence; Cardozo's conception of the judicial process; and American legal realism, with which last the author exhibits judicious sympathy. This survey is followed by the chapter on the Judicial Process, which has already been mentioned, a table of cases, a useful list of books, and periodicals cited, and an analytical index.

This textbook has signal merits. It is concise, methodical, judiciously critical, written in a clear and practical style. Among its other virtues is that it candidly indicates the countervailing considerations on problematical issues, as viewed by a relatively objective critic. It embraces not only legal analysis and legal philosophy but a variety of other and more mundane matters, more than are typically found in books on jurisprudence. In particular, mention should be made of the author's discussions of the philosophical and logical aspects of law as providing valuable accounts of contemporary developments in these areas. On the other hand, the basic ideas of law—rights, duties, property, contract, and the like—are dealt with interstitially, not as such. Like other recent texts on jurisprudence published in English, it reveals the enormous influence of Roscoe Pound's technique and teaching in this field; the author, who describes himself as an "axiological realist," indicates that, tentatively at least, Pound's doctrine of social interests seems to him the best constructive legal philosophy. For the purposes of a textbook that seeks to catalogue and criticize in an orderly manner the great variety of questions connoted by the broad and ambivalent conception of jurisprudence, the eclectic approach is excellently designed.

However, there are questions, which the reading of a book so large in scope, inevitably evokes. Thus, points of detail might be queried, where the exposition is too compact to be precise or perhaps has slipped in some venial detail. Only a few can be noted: *e.g.*, on page 241, it is said that "some states" have compulsory automobile liability insurance—it would be helpful to know which states these are, in addition to the well-known Massachusetts legislation. On page 251, spatial limitation of the operation of legal norms is said to be more recent than that by nationality; this is quite misleading without an explanation that "nationality" is meant in the unusual sense of tribal relationship. And the suggestion, on page 258 that the possibility of employing unique technical symbols in such branches of law as Real Property and Conflict of Laws permits more effective control over legal reasoning, may perhaps cause some querulous eyebrows to quiver. Other questions strike deeper. For example, the critique of Kelsen's "Pure Theory of Law," inappropriately described as a "power system," seems to the reviewer (who is no follower of Kelsen) almost entirely misconceived; without elaborating the details, none of the four stated deficiencies of the system, as set forth on pages 262-265, appears to be inherent in the scheme. What is more, the critique misses the main point, viz., that "pure" law is law with the vital ethical, political, and sociological elements expurgated. But this is a point that the author, who also accepts the imperative conception of law, is not in position to make.

This presents what is perhaps the most critical issue involved in the eclectic view of jurisprudence presupposed. This straddles the chasm in current juristic thinking between the traditional, speculative, and formal modes of legal analysis on the one side, and on the other more pragmatic—or, if you please, realistic—types that seek to relate legal norms to their ethical and social context. The eclectic solution, which has been most successfully employed by Roscoe Pound, is to bridge the chasm by accepting the conceptions of law as both formal, authoritative norm, and, at the same time, as means to achieve desired social objectives. So too the author subscribes both to "axiological realism," envisaged in a scheme of social interests, and likewise to the imperative or formal conception of law. The justification offered, in terms of policy, is that the authoritarian conception conserves peace and, logically speaking, that ethical and social elements are not peculiar to law. But in fact the important condition of legal rules is that they are believed to be just; when they deviate from the basic ideas and needs of the time, they must wither on the vine. The issue thus is whether it is possible or proper to exclude from the domain of law the essential elements that give it sense and life.

A final question concerns the broader objectives of legal education. As the author intimates, "jurisprudence" is a category diffuse enough to serve a variety of purposes in the primarily dogmatic scheme of legal training. Should it be utilized to describe the overall operation of a system of positive law? Or survey the general legal ideas received in a given legal culture? Or explore the sophistications of legal analysis? Or follow the more celebrated flights of legal philosophy? There are no inevitable answers to questions such as these; one can but suggest preferences. In the reviewer's judgment, a required course in jurisprudence should be a challenge to the student to consider the more fundamental aspects of law that, in the typical scheme of legal education in the United States today, are likely to be slighted. It is obvious that the intensive study of the great mass of existing law, principally on the basis of collections of cases, has involved serious sacrifices in other directions. Legal history has some time since had to take a back seat; the comparative study of other legal systems, even of the civil law, is a luxury available only to relatively few ad-

vanced students; there is much room to develop more logical analyses of basic legal ideas; still more to explore the factual conditions and motives of the law. These possibilities should be drawn to the attention of prospective members of the bar, and, what is even more important, this should be done in a manner inspiring them to read the more significant contributions to legal science on their own, so that, in the busy concerns of later practice, they will still contrive to keep themselves contemporaneously informed.

With objectives such as these in view, a textbook on jurisprudence might be more of an exploration than a flat survey of the grander phases of justice, in which consideration would be given to the basic conceptions of property, contract, crime, and the like, and to the relevant social interests and policies, envisaged in terms of their history and comparative development in the different legal systems, as well as to logical or philosophical discussions of the general nature of law. It is gratifying that this new textbook has measurably extended the logical and philosophical horizons of jurisprudence. It is no criticism that there is still much to add, especially from the realm of comparative legal science. Indeed, it seems to the reviewer that the study of the more abstract ideas about law should be systematically integrated with the substantive general concepts to which they relate.

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