Reviews and Notices

Legal Essays in Honour of Arthur Moxon. Edited by J. A. CORRY, F.C. CRONKITE and E. F. WHITMORE. Published in co-operation with the University of Saskatchewan by the University of Toronto Press, Toronto. 1953. Pp. xi, 262. ($10.00)

The College of Law of the University of Saskatchewan, though not in point of years the youngest law school in Canada, was established only in 1919 and may still be characterized as youthful. Yet in the publication of this volume of essays, "the first volume of legal essays to be produced entirely by the graduates of one Canadian law school", as the editors are proud to remind us in their foreword, we have an act that testifies to its early maturity and to its influence on Canadian legal education.

These essays were written to honour Arthur Moxon, who was a moving spirit in the creation of the College of Law and its first dean. His reputation as a giant of the legal profession is secure throughout Canada and it is fitting that some marked honour should be shown him. Arthur Moxon is one of those fortunate men endowed by nature with a brilliant mind and a personality that commands not only respect but affection. These gifts have brought him great distinction, first as student at Dalhousie University, then as Rhodes Scholar at Oxford, as Professor of Classics at the University of Saskatchewan and later as Professor and Dean of the College of Law there, as legal practitioner, as a Bencher and then President of the Law Society of Saskatchewan, as a member of the Senate of the University and then a member and eventually chairman of its Board of Governors. But it is chiefly for his unusual skill as a teacher of law and for his contribution to legal education that the graduates of the College of Law honour him. His former students remember him as the inspired teacher, the scholar of great integrity and the possessor of "wit at its quickest". They were devoted pupils and his loyal friends; and, they assure us, he made a lasting beneficial impression on their characters. His influence has reached even beyond those he taught, for to subsequent generations of law students at the University of Saskatchewan he has become a symbol of the best that a law stu-

dent can aspire to; indeed, one of those rare beings. a legend in his own lifetime.

We get an idea of Mr. Moxon's greatness as a teacher from some of Professor Corry's remarks made when he presented the volume to him. He said:

> In subtle ways that are difficult to describe, Moxon persuaded his students at a very early stage that the legal profession had a very special place in the community. Thirty years ago he was saying what was then uncommon and unpopular but is now a commonplace, that democratic society is not likely to survive unless it calls to its service a number of persons prepared by education and experience for leadership in the community. Democracy needs leadership and the lawyers compose one of the groups best equipped to provide it. His students responded to this teaching and became a corporate entity with a corporate spirit which . . . must stand high in the annals of student fellowship everywhere.

It is this emphasis upon service to others and upon loyalty to the traditions of the legal profession that make him an inspiring example to all who know him.

The idea behind this volume is appropriate and commendable. If one wishes to pay homage to a revered master of the law, especially noted as teacher and scholar, there can be no more fitting way than to produce a book in his honour. The very act of publishing these essays and the spirit in which it was done are probably regarded by Mr. Moxon as the important part of the authors' tribute to him. A reviewer, however, must go beyond reporting good motives and ask some other questions about the book. For example, is it desirable to bring together in a single volume a number of essays that bear no relation to each other? The authors were allowed to choose their own subjects and there is, therefore, no common theme running through the volume. There are, of course, many precedents for this type of book, but perhaps it would have been a more significant work if it had been devoted to a common subject or theme, just as a special issue of a law review on a single subject seems to me more significant that the ordinary issue with a hodge-podge of articles.

And, then, what about the quality of the essays? On the whole one forms a good opinion of them. They are not all of equal interest or merit of course; but some of them seem to me to be the equal of any article likely to be found in a legal journal. It is evident that they embody the results of much painstaking research and, when one remembers that few of the contributors are prolific authors, one feels admiration for the manner in which they have expounded their varied theses.

The first essay, by E. A. Driedger, is "The Retrospective Operation of Statutes". The first half of the essay was to me rather dis-

appointing because it is merely a quarrel with the definition of a retrospective statute usually found in textbooks, ending on this note: "Let us now turn to the true definition . . .". Can there be such a thing as a "true definition"? The rest of the essay, however, contains a valuable discussion of the words that should be used to accomplish the retrospective operation of a statute and of what words should not be interpreted as having that effect. When legislation forms an increasingly large part of our law, it is well to be reminded of the importance of the proper drafting of statutes.

Mr. Sheppard's article on the "Liability of a Vendor Director" is a review of the position, at law and in equity, of the director who buys property from and sells property to his company. The author's concern is to show that *Burland* v. *Earle* (where a director bought property for $21,564 and resold it to his company for $60,000) is not, or at any rate should not be, an authority for the proposition that a director, who without any commission or mandate to purchase property on behalf of his company sells his own property to his company, is not liable to account for any profit he may have made. The way in which he attempts to do this is rather confusing. In fact, his conclusion that a vendor-director can always be made in equity to account for any profit he may make at the expense of his company does not seem to me to be supported by the argument and, furthermore, is in direct conflict with the judgment of the Privy Council in that case. Either that judgment must be said to be wrong or it must be limited and distinguished more convincingly than Mr. Sheppard has done.

Two of the essays deal directly with labour law. Professor Schmitt's is a straight-forward review of the jurisdiction of the federal Parliament to legislate on labour matters, stating the issues clearly and easy to read. Mr. Clawson's, in spite of a general title, "Law and Labour Relations", concentrates on a specific topic, an analysis of the Industrial Relations and Disputes Investigation Act and an assessment of its impact on labour relations. He concludes that "law can provide effective answers" to a great many of Canada's labour problems. Although the author's treatment tends to be descriptive and lengthy, the reader is rewarded with many informed comments from a man with wide experience in the field of labour relations.

Professor Whitmore's essay, "The Judicial Control of Union Discipline", is a reprint of an article published earlier in the Canadian Bar Review. In it he reviews Kuzych's prolonged legal battle with his union and in particular scrutinizes the Privy Council's decision in the *Kuzych* case, in which it held that Kuzych, even if his union had violated the rules of natural justice when it expelled him, could not resort to the courts without first exhausting his right of appeal under the constitution of the union because, in ac-

cordance with the constitution and by-laws of the union, he had agreed not to do so. The analysis of this case, and other relevant cases, is a careful and excellent piece of work.

Professor Corry, writing on "Statutory Powers", attempts to answer the most difficult question of administrative law, What is a judicial function? His essay, excellent as it is in many ways, fails to remove much of the confusion surrounding this question, for it ends up with a definition of a judicial function similar to the unsatisfactory one adopted by the Donoughmore Committee on Ministers' Powers. In essence the difference between a judicial and legislative function is said to be the absence or presence of a discretion, a distinction that seems unreal, at best an oversimplification. And, then, what is a quasi-judicial function? Professor Corry suggests no test for determining when we are dealing with this hybrid; and, in fact, it would seem that it no longer exists. His approach ignores the fact that our courts in the past insisted on certain administrative officers (in the sense that their decisions were discretionary, based on policy considerations) complying with a minimal procedure called the rules of natural justice, designed to ensure that those who decide will have the facts before them. It is not a control of the decision: it is a safeguard against arbitrary decisions by persons who do not know the facts. Professor Corry ends his essay with a good analysis of the problem of discretionary powers dealt with in two Canadian tax cases: the *Wright's Canadian Ropes Ltd.* case and the *Pure Spring Co.* case.

Mr. W. R. Jackett's essay, "Sections 91, 92 and the Privy Council", provides a good summary of the rules developed by the courts for interpreting the distribution of powers sections of the British North America Act. But it seems to me that, here and there, there is a tendency to use some of the cases to support broader propositions than they are capable of supporting. For example, there is this passage:

> A suggestion that Parliament cannot legislate on matters outside all the classes of subjects enumerated in sections 91 and 92, except in case of dire national emergency such as war, is at complete variance with the words of section 91 and with many decided cases, e.g. the *Canada Temperance Act* cases, the cases holding that Parliament can legislate in relation to the incorporation of companies with other than provincial objects, the *Aeronautics Case* and the *Radio Case.*

Certainly, the *Aeronautics* case and even, it can be argued, the *Radio* case are no support for any such statement, especially so since the Privy Council in the *Labour Conventions* case emphatically rejected the suggestion that they were authority for the proposition that the federal parliament had legislative authority under the general power of section 91 to implement all treaties made by Canada. The attempt to explain away the decision of the Privy Council in the *Labour Conventions* case in footnote 71 at page

175 is, to say the least, novel and unlikely to be accepted by the courts. As for the *Canada Temperance Act* cases, not even Lord Simon's judgment in the *Canada Temperance Federation* case of 1946 seems to have removed them from the category of the exceptional: see the Privy Council's judgment in the *Margarine* case in 1950.

Professor Lederman's essay on "Classification of Laws and the British North America Act" is a different sort of study of the interpretation of sections 91 and 92. It is largely a discourse on the semantic problems that lawyers face in the interpretative process. I found it conceptualistic and not easy to read, sprinkled with such expressions as "relative-value decisions", "concrete non-legal and non-verbal facts", "fact-categories" and "fact situations", but in spite of the difficulties for a reader unfamiliar with the language of modern philosophy, it is worth reading. The main contention of the author is that "a rule of law for purposes of the distribution of legislative powers is to be classified by that feature of its meaning which is judged the most important one in that respect". This, of course, emphasizes the subjective element in the interpretation of our constitution, but it seems a realistic view.

Mr. Mundell, in "The Crown and *Res Judicata*", considers whether the rule of *res judicata inter partes* applies between the Crown and a subject in successive criminal proceedings or in successive civil and criminal, or criminal and civil proceedings. After a study of the few relevant cases, he concludes that it should not bind the Crown, favouring the decision of the Saskatchewan Court of Appeal in *Rex* v. *Bayn* rather than the opposite decision of the Ontario Court of Appeal in *The King* v. *Quinn*. General considerations of policy seem to support him.

The last essay, "Isolation, Intention, and Income", by Dean Curtis, traces the evolution of the doctrine of intention as the test for determining the taxability of gains arising on isolated transactions. The author's analysis of the cases discloses that since the *Anderson Logging Company* case the Canadian courts, like the English courts before them, have regarded the intention with which a transaction is entered into as an essential element of any test for determining taxability. But the recent Canadian decisions seem to go beyond this and to have accepted the doctrine of intention as the sole test. As the author concludes: ". . . it seems clear that, in Canada, casual gains are brought within charge if they spring from activities entered upon with profit in view".

The authors, the editors and the publishers are to be congratulated on producing a book that will be found useful by the legal profession, a worthy tribute to Arthur Moxon.

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Chartered Banking in Canada. By A. B. JAMIESON. With a foreword by W. A. MACKINTOSH. Toronto: The Ryerson Press. 1953. Pp. x, 394. ($5.00)

Though this book is not addressed primarily to lawyers, it ought to have a special appeal for them. In self-interest, if for no other reason, counsel who is retained for or against a bank will wish to understand the background of his problem. Apart from that, a member of the legal profession, which prides itself on a broad knowledge of men and affairs, ought to acquaint himself, as a citizen, with that branch of our economy which mobilizes savings and, with appropriate safeguards, makes them available for the credit requirements of industry, commerce and the individual. The book was written originally as a textbook for students following the courses in banking conducted by Queen's University, but its wider interest has already brought it into most branches of Canadian banks.

Mr. Jamieson is another Canadian for whom Scotland can be sincerely thanked. He came to a Canadian bank as a young man with a thorough grounding in the fundamental principles of Scottish banking and an already developed nose for their legal implications. After twenty-two years as a front-line banker in various branches, his abilities brought him to the head office of Canada's largest bank. There he served almost as long again, resolving credit, administrative and other problems and, incidentally, dealing with eminent counsel. He thus became well-versed not only in banking in all its aspects but in the law of banking as well. He excells in breadth of understanding and clarity of explanation.

The book is in two parts. The first is historical, covering succinctly the foundations and development of the Canadian banking system. In epitome, this part is a history of Canada seen through a banker's eyes, for as the country grew so did the banking system. Legislators in the separate colonies before confederation managed for the most part to base the early bank charters on sound principles, which were carried over into Canada's first general banking statute of 1871. As other colonies joined the federation and new provinces were created from the western territories, the banking system expanded and moved with the frontiers, facilitating particularly the activities of the pioneer wheat farmers in the West.

The great depression of the thirties created, as was to be expected, special strains for Canada's banks. The author tells how the banks tried to keep before them the importance of conducting their business in a way to restore confidence and a sane outlook. As an aftermath of the depression came the effort of a western province to control banking within its borders. Wherever they could, the embattled banks brought the issues before the courts, but in some cases the legislation was so swiftly enacted and so drastic that the federal power of disallowance, which had seeming-

ly lapsed through non-user, had to be revived. Mr. Jamieson tells the story well. In the result important constitutional decisions were rendered by the highest courts and new precedents in constitutional practice were established outside the courts.

In 1933 the revision of the Bank Act, which by preference of Parliament and bankers had been taking place every ten years, was postponed a year while experts examined the banking system and the need for a central bank. The revision took place in the following year, when provision was made for the establishment of the Bank of Canada, which commenced business in March of 1935, with responsibility for the regulation of credit and currency in the best interests of the country. The relationship of the central bank to the commercial banks has proved to be of great importance to the Canadian economy and Mr. Jamieson's book should lead the reader to a better understanding of the banking system as it operated before and after the introduction of the new mechanism. The historical material is supplemented by a special chapter at the end of part II on the central banking activities of the Bank of Canada.

And so the story continues, through World War II and post-war developments. The second war found Canada and the banks better prepared than the first, in experience and organization, to stand the shocks of a near-universal conflict. Thousands of bankers joined the forces on sea and land and in the air. Those who remained, aided by a great influx of women, carried on the usual business of banking, to which were soon added responsibilities arising from rationing.

In part II Mr. Jamieson turns from his rôle of historian to that of banker's banker and surveys the broad field of banking practice. Administrative and organizational problems in connection with branch banking and the vital handling of deposits are discussed. Next he turns to lending, how to put money out and get it back with some profit. This leads to a study of various types of business, to different kinds of collateral security and, a matter of general interest, the analysis of financial statements. The operation of foreign trade, as facilitated by letters of credit and reflected in foreign exchange, then occupies his attention. The activities of clearing houses are covered, and audits and inspections.

In addition to an appendix of useful statistical material, Mr. Jamieson has included separate indices for the two parts of his book, prepared with characteristic thoroughness. With their help the reader without time to read the book through can readily find what he wants. For the price, much less than that of most legal textbooks, the lawyer can in this book make an addition to his library confident that he will be more than repaid.

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Hayes and Jarman: Forms of Wills. Eighteenth edition by KENNETH WARNELL RUBIN. London: Sweet & Maxwell Limited. Toronto: The Carswell Company, Limited. 1952. Pp. xc, 332. ($12.50)

In a review of the seventeenth edition of this work in the University of Toronto Law Journal for 1949, I suggested in effect that the largest portion of it—the forms—was, for a book published in the middle of the twentieth century, too reminiscent of a society over a century older, when the book was first published, and that today, as the book stood, the annotations to the Wills Act of 1837, which began with the second edition, were the really valuable portion of the work. In the short space of five years a new editor has undertaken a complete overhaul and produced a new model. Mr. Rubin had a difficult task. It is always a problem in any book of forms to decide whether to give more than the barest essentials for a simple transaction, leaving the balance to the good judgment of the skilled draftsman in each particular circumstance, very few of which are identical, or to attempt to draft complicated forms for varying types of situations. *Hayes and Jarman* is committed to the latter approach and therefore suffers from some of the defects which it entails.

One defect of former editions has to a great extent been removed by Mr. Rubin—the book is now alive to modern forms of testamentary disposition. Long settlements, to a large extent obsolete in everyday life, are reduced in number and modernized by the use of the trust for conversion. But what about taxation and the effect of its incidence upon the various forms of disposition? What about life insurance payable directly to a named beneficiary? Perhaps these do not constitute in England as common a problem as elsewhere. Very little note is taken of them.

This leads to a fundamental problem—the use of these forms. Some twenty-nine "precedents" are given for an equal number of situations, followed by a vast number of suggested clauses for miscellaneous problems. How many of the given situations a solicitor runs into in a lifetime of practice is of course unknown; but can he adapt these forms to the many other situations he will encounter? Can he, in the time-old phrase, with scissors and paste put together from *Hayes and Jarman* a document suitable to his client's needs? Or is he not in ultimate analysis going to start from scratch, build up in one consistent whole his own document for each particular client, leaning heavily both on his knowledge of the dangers and pitfalls in testamentary disposition and on his own judgment as to suitable methods, gained in experience? Mr. Rubin has long notes upon each form, and therein lies the book's potential usefulness—to guide us to the dangers and pitfalls. In short, is a

book of printed forms as such part of a properly educated lawyer's tools?

On the merits of this edition, the editor has rewritten practically all the precedents and varied the order of most of the notes to fit the new form. These notes still contain, largely reproduced from earlier editions, some entertaining material: for example, in the list of items of property to be discussed with a testator, with a view to including or excepting from a general gift of personal property, we find one running from dog-carts and victorias to airships (as distinguished from aeroplanes, separately listed), another running from bows and arrows to cannon (p. 40, copied from pp. 149-50 in the seventeenth edition). There seems an unnecessary complication in precedent 2 as to intermediate income: surely this could be simplified, especially for the type of situation posed—life interest to wife, remainder to two adult sons, no more children expected. In a number of precedents trouble may be forecast by the use of powers of appointment, neither general nor special. Although I think such powers should be valid, the use, in the light of present House of Lords dicta about not leaving it to others to make a will for you, of a power "for such person or persons *for such purposes* . . . as my said daughter may appoint" (precedents 4 and 5), or "*upon such trusts* as my said sister shall by her will appoint" with gift over in default to the sister, her husband or survivor (precedent 10; italics added in each case) is only asking for trouble. It is true that in the second it is a pure power, so no problem as to the metes and bounds of the main trust ordinarily arises (*Re Gestetner*, [1953] 1 All E.R. 1150), but what if the daughter or sister appoints to a fox-hunting purpose within the confines of *Re Thompson*, [1943] Ch. 342? There is a tendency to refer to older, or more often unspecified, editions of various text-books—for example, *Dicey*, Conflict of Laws; *Jarman*, Wills. In the course of one hundred years, editions and paging change. Precedents for situations where a married son or daughter is not expected to have children do not, in the ultimate contingency, take account of the widespread practice of adoption (for example, precedent 4, though the power, if valid, could be exercised in favour of such children in that case). It is believed that only a minority of states in the United States require publication of wills (and in these by special statute) contrary to the statement on page 205 ("American wills still require publication"). In the light of criticism of former editions, the note on domicile in the appendix has been rewritten and substantially improved. It is doubtful however, even yet, if it is correct to say that a judicially separated wife can acquire a domicile separate from her husband (p. 288, copied from p. 372 of the seventeenth edition).

Mr. Rubin has done a yeoman job in trying to bring this work

up to date and, subject to the validity of the powers of appointment he proposes, such few criticisms as I have noted are carried over from earlier editions.

GILBERT D. KENNEDY*

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Jurisprudence: Men and Ideas of the Law. By EDWIN W. PATTERSON.[1] Brooklyn: Foundation Press, Inc. 1953. Pp. xiii, 649. ($7.50 U. S.)

So far as this reviewer is aware, this is the first text book (properly so-called) that has been published in the United States on jurisprudence. The case-book method of teaching, so popular in American law schools, has hitherto been the exclusive method of presenting the subject. Inasmuch as no one method is ever ideal for all purposes, an exclusive method must necessarily be somewhat limited in what it achieves. The case book is a highly satisfactory tool, perhaps the best tool, to use in the classroom. There the student is helped, through supervision, to an understanding of jurisprudence by having his attention directed to an interpretation of actual cases and specific materials which illustrates the rôle it plays in contemporary society. Through examples and more or less vivid portrayal, he masters the specific, and thereby grasps the general nature of the subject. But, and the point is, he is helped. Even the spectre of examinations is a "help", for it forces him to read all, or at least almost all, the materials prescribed.

The case book is not so satisfactory for the much wider audience outside the classroom who must help themselves, who, being ignorant of the nature and importance of the subject, or largely so, must correct that deficiency over weekends. The man-on-the-street lawyer and layman is, unlike the student, not forced to read about jurisprudence and will only do so if he finds it stimulating, or rather if he finds it presented in a stimulating way. It is certainly an unexciting prospect to sit down in one's spare time and puzzle over a long list of seemingly disconnected cases and materials. The task is doubly onerous when little or nothing is known of the subject matter in the first place. On the other hand, the text book can provide the interpolative guidance lacking in the case book and, when well written, can provide the stimulus and create the interest that is so necessary to capture the attention of the uninitiated.

It is unfortunate that so few are aware of the importance of jurisprudence. One of the reasons for this widespread ignorance has been the general failure of those "in the know" to provide an

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appropriate vehicle to convey its message beyond the confines of the lecture hall. Professor Patterson's book purposes to reach the law student, lawyer and non-professional alike, to make the substance of jurisprudence accessible to all who are or might be interested, and to interest those who might think that jurisprudential theory is not worth being interested in. The book is therefore not just a chronicle of jurisprudence but also an invitation to it. The invitation is worth accepting. Professor Patterson is a good, if somewhat austere, host.

The author is aware that the science of jurisprudence is considered in many quarters with mingled feelings of indifference, suspicion and even contempt. Perhaps this negative attitude is most prevalent in the ranks of the practising profession itself, where jurisprudence is so often castigated as "academic", the opprobrious adjective used indiscriminately to stigmatize anything which does not promise obvious bread and butter returns. This attitude cannot be justified, although it may be explained on grounds of ignorance. No lawyer considers that the practice of law is directed solely towards making money; at least no lawyer will openly admit that it is, and it seems that a good part of the time of lawyers and their associations is spent in impressing the contrary, by word and deed, on a sometimes sceptical public. If the lawyers mean what they say, they are also interested, *must* be interested, in the development of law, what it should and can be. Much of the content of jurisprudence is directed towards this fundamental problem.

Furthermore, it is equally wrong to deny any value to jurisprudence in the more mundane work-a-day aspect of actual practice. A knowledge of jurisprudence represents just one more skill at the disposal of the practising lawyer and he is the better lawyer for having it and the worse for studiously ignoring it. Professor Patterson's book contains an eloquent refutation of the premise that jurisprudence is foreign to the actualities of winning and losing cases in its reference to more than 250 court decisions as examples of cases where, in varying degrees, the influence of jurisprudence has left its mark in the final result. All in all the darts hurled at the study of jurisprudence are a product of indifference not experience. Indifference is never a virtue but, if it is widespread, it is generally understandable. This is so with jurisprudence, and largely accounts for the suspicion and reluctance which Professor Patterson evidently anticipates as the first reaction to his invitation to study that subject.

The blame for this reluctance lies partly with the cognoscenti themselves. Those already learned in jurisprudence have in manner and attitude (although presumably not in intention) jealously guarded the frontiers of the subject from any incursions by the outsider. Too many jurisprudents seem to be congenitally incap-

able of expressing even the simplest ideas without resorting to the most pretentious and elaborate verbiage. One often gets the impression that if the dictionary fails to provide a sufficiently obtuse word the jurisprudent deliberately coins one to further ensure that he will not be understood by any outside his select circle of confidants. It is no wonder that the outsider feels that jurisprudence belongs to a mysterious never-never land, that it is a secret cult wherein membership is reserved to a few chosen intellectuals of the ivory tower. It is also no wonder that he hesitates to join a group in which he feels, not unreasonably, that he will be as much out of place as a vegetarian in a meat market.

Another reason, perhaps, why jurisprudence is not more widely appreciated, at least in North America, is our facile agility in leaping to general value-conclusions, which are characteristically insular in basis. Because we cannot *immediately* envisage any direct value to be gained from studying the views of Immanuel Kant, for example, we are too easily disposed to assume that there is none and can be none. Besides, as we are so prone to say today, he was a foreigner anyway. For too many people that suffices to dispose of Kant. By similar paucity of "reasoning" we eliminate Plato because he wrote over 2,000 years ago, Aquinas because he was a Catholic theologian, Pashukanis because he was a Russian, and Bentham because he was a Reformer. Eventually we end up with nothing, and to many that is as good a definition of jurisprudence as any.

The fact that these various preconceptions are, in part at least, explainable does not make them any the less wrong. The task that Professor Patterson undertakes is simply to prove them wrong and to convince the reader that they are wrong. Expressed positively, he tries to show that jurisprudence has value and the value that it has. The achievement of this aim does not depend so much on what particular materials are used and necessarily cannot depend on using all the materials that go to the totality of jurisprudence. It is enough that the contents of the book are fairly representative of the subject matter. Whether they are the *best* contents possible will no doubt occupy the attention of the dedicated jurisprudents and opinions will naturally differ, but whether they are or not will be of no concern to the invitees Professor Patterson has in mind. What is important is a simple elucidation of the general make-up of jurisprudence emphasized in the context of the law in action, and that is adequately done. The reader finds out the basic things, what jurisprudence is and how it works.

One further observation might be in order to explain the word "austere" previously used in this review to describe the manner of presenting the subject matter. The book is hardly stimulating reading. The tale is told with a straight-faced solemnity, a droning dig-

nity, which rather saps the reader's stamina. This is too bad. Otherwise the book is excellent, and if it is put down it should be picked up again. It may not be.

R. S. MACKAY*

Law Your Law

Here one comes upon an all-important English trait: the respect for constitutionalism and legality, the belief in 'the law' as something above the State and above the individual, something which is cruel and stupid, of course, but at any rate *incorruptible*

It is not that anyone imagines the law to be just. Everyone knows that there is one law for the rich and another for the poor. But no one accepts the implications of this, everyone takes it for granted that the law, such as it is, will be respected, and feels a sense of outrage when it is not. Remarks like 'They can't run me in; I haven't done anything wrong', or 'They can't do that; it's against the law', are part of the atmosphere of England. The professed enemies of society have this feeling as strongly as anyone else. One sees it in prison-books like Wilfred Macartney's *Walls Have Mouths* or Jim Phelan's *Jail Journey*, in the solemn idiocies that take place at the trials of Conscientious Objectors, in letters to the papers from eminent Marxist professors, pointing out that this or that is a 'miscarriage of British justice'. Everyone believes in his heart that the law can be, ought to be, and, on the whole, will be impartially administered. The totalitarian idea that there is no such thing as law, there is only power, has never taken root. Even the intelligentsia have only accepted it in theory.

An illusion can become a half-truth, a mask can alter the expression of a face. The familiar arguments to the effect that democracy is 'just the same as' or 'just as bad as' totalitarianism never take account of this fact. All such arguments boil down to saying that half a loaf is the same as no bread. In England such concepts as justice, liberty, and objective truth are still believed in. They may be illusions, but they are very powerful illusions. The belief in them influences conduct, national life is different because of them. In proof of which, look about you. Where are the rubber truncheons, where is the castor oil? The sword is still in the scabbard, and while it stays there corruption cannot go beyond a certain point. The English electoral system, for instance, is an all but open fraud. In a dozen obvious ways it is gerrymandered, in the interest of the monied class. But until some deep change has occurred in the public mind, it cannot become *completely* corrupt. You do not arrive at the polling booth to find men with revolvers telling you which way to vote, nor are the votes miscounted, nor is there any direct bribery. Even hypocrisy is a powerful safeguard. The hanging judge, that evil old man in scarlet robe and horsehair wig, whom nothing short of dynamite will ever teach what century he is living in, but who will at any rate interpret the law according to the books and will in no circumstances take a money bribe, is one of the symbolic figures of England. He is a symbol of the strange mixture of reality and illusion, democracy and privilege, humbug and decency, the subtle network of compromises, by which the nation keeps itself in its familiar shape. (George Orwell, England Your England, from *Such, Such were the Joys*)

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