The greater part of the book can be said to consist of a bare reproduction of Statutory Rules; the Commonwealth Conciliation and Arbitration Act alone comes in for general annotation. No attempt is made at any stage of the compilation to discuss the general principles of Australian industrial or labour law, to consider the sociological background of such law, to find a philosophic basis for Australian judicial decisions relative to labour and industry, or to suggest that, in any measure, there has been built up in Australia an industrial or labour jurisprudence. The book adds nothing to the study of industrial relations, so that it will have little appeal to students of this subject. The industrial practitioner, however, should find it very useful to have at his disposal, in convenient form, the references to judicial decisions bearing on the interpretation of the Commonwealth Conciliation and Arbitration Act.

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Jurisprudence, by G. W. PATON, Professor of Jurisprudence in the University of Melbourne; pp. 528; Oxford, 1946.

The multitude of speculations (which have been rife throughout the Law School this year) as to what was the source from which Professor Paton has been apparently quoting so extensively in his lectures on Jurisprudence in recent months, may now be set at rest. Professor Paton has been quoting from his own copy of his newly published text-book on Jurisprudence. At the time the review was written, his was the only copy available in Australia.

Jurisprudence has long been the "Cinderella" of the law course. After having been diverted, during the second year of the course, from "the liberal arts," and having thereafter steered a point-to-point course through a maze of detailed technical law subjects, the law student is, in his last year, compelled to venture his hand at "great circle" navigation in the oceanic deeps of philosophico-sociologico-legal thinking (to coin a "Poundism") which is Jurisprudence. And all too often the student has grumbled—grumbled because while he can see the use of subjects like Contracts, which will (we hope) teach him, for instance, such acts of practical wisdom as the necessity of getting a "note or memorandum in writing" from his vendor when he buys a house, he cannot see the point of Jurisprudence—what it is all about, why he should have to bother his head with all this "academic theorising"—it doesn't get him any where—what practical use can he make of it? And even when he does see the point of Jurisprudence, he has grumbled because of the lack of adequate charts—because in other words, there has been no satisfactory text-book.

If a student cannot now see the point of Jurisprudence, then it must be said that he has missed much of the real significance of World War II. For only by the proper understanding and publicising of the nature and end of law and the limitations of law and the power of the State which the study of Jurisprudence should confer, will it be possible to prevent the recurrence of such things as the concentration camps of Belsen and

Dachau. For these reasons it is to be hoped that Jurisprudence will cease to be a Cinderella.

However that may be, the appearance of *Jurisprudence* by Professor Paton should largely silence the other standard complaint, that there has been no adequate text-book. Limitations of space preclude the detailed review of the book which it really deserves. Further, one of the penalties which Professor Paton must perforce suffer for his pre-eminence in the field of Jurisprudence is that he cannot have judgment by his peers in this University—for an adequate discussion of the merits of his book he will have to look overseas. All that can be done here is to give some idea of the matter with which the 493 pages of his book is packed. The scope of his book is, I believe, more comprehensive than any of the present standard text-books. Hitherto the student has been compelled to have recourse to a variety of books—first to Pound, then to Holmes, then to Salmond, then to Allen, and so on—each of them supplying part, and none of them the whole. Here, at last, the student will find the whole subject covered—and covered in great detail—in one book and an extraordinarily good book at that.

The method of presentation follows, in the main, that used at present by the Professor in his lectures. Thus Book I. examines the general nature of jurisprudence, the schools of jurisprudence, the problem of the definition of law, the end of law, the problem of law and the state. Book II. is a commentary on the sources of law—the judicial method, the problems of statutory interpretation and codification, the influence of juristic writings and professional opinion.

Book III. and Book IV. overlap to a certain extent. Book III. is concerned with technique of the law—" rights," " duties," " titles," " acts " and events, while Book IV. deals with various fundamental legal concepts such as legal personality, corporate personality, contract, tort, criminal liability, ownership and possession and so forth. The concluding Book—Book V.—contains a very interesting analysis of law on the basis of interests.

But while Professor Paton has thus adhered to his own general scheme of teaching Jurisprudence, his detailed analysis of and commentary on the various concepts is such that it can be readily foreseen that the book —though primarily intended as a text-book for students—will not remain such solely, and that the practitioner in the law will soon be delving into it, to extract the general principle which so often eludes in the maze of decided cases. Particullaly is this so in the sections relating to delict and criminal liability and theories of punishment. Members practising at the criminal Bar—when faced with this poser in the Court of Criminal Appeal—" You say, Mr. ——, that the punishment is excessive. On what grounds ? " have been heard to comment (subsequently) very testily, " How can you answer that sort of question ? There are no theories of punishment." Recourse to Professor Paton's work may hereafter enhance the chances of " faultless felons " in the dock of the Criminal Court !

Again the discussion and analysis of judicial precedent is another portion which, it can be foreseen, will repay study, not only by students, but also by the profession at large. In passing, overseas readers ought to

be grateful to Professor Paton for bringing to their notice the justly famous (but hitherto only in Victoria) judgment of Sir John Madden in *Harvey v. Ottoway.*[1]

Furthermore, the discussion of statutory interpretation is particularly instructive. Another point—in some instance, the law in practice lags in its solution of problems behind the text-book writers. Some day a lawyer will annotate A. P. Herbert's " Misleading Cases " with the footnotes from Salmond's " Law of Torts " from which Herbert appears to have taken his various problems. So also Professor Paton, at p. 303, discussing the effect of mistake in contracts, posits the favourite problem of A proposing marriage to B, believing she is C, and B accepting that proposal, believing it was meant for her. A marriage based on the converse of that mistake lurked in the background of a trial in Victoria only this year ! Fortunately for the judge, the problem of the validity of the marriage did not then come up for solution. I say " fortunately," because authority on points such as that is frequently impossible to discover. Just as frequently, some discussion of it will lurk hidden away in the pages of the *Law Quarterly Review* or one of the various academic legal periodicals. On points such as that on which the cases are silent, the legal profession will find Professor Paton's book a mine of stimulating discussion and bibliography.

The erudition, comprehensiveness of treatment and qualities of balanced judgment which are so noticeable throughout the book (of which qualities one could go on citing instance after instance) make it, in my opinion at least, a matter of regret that Professor Paton should have elected in some portions of his book—notably in his discussion of the end of law and of the relationship of law and the state—both, I believe, crucial problems in our day—to operate under a self-denying ordinance which he states in these terms in his Preface :—

" It is the conviction of the writer that, while solutions in jurisprudence are extraordinarily few, the fundamental questions may be stated in reasonably simple language. As the purpose of teaching is not to dictate dogmatic answers but to stimulate thought, the important thing is to make clear exactly what the problems are."

Apparently for these reasons Professor Paton has in the chapters just referred to, merely stated the problems, and summarised various arguments and solutions of such problems and left it at that. His own conclusions he does not always reveal. It is perhaps dangerous for a teaching Professor to express his views. A certain prelate was once unwise enough to express appreciation of some scones his cook had baked. Thereafter scones appeared on the menu with the monotonous regularity of films from Hollywood studios trying to repeat the success of the first film in the cycle. Nowadays, whatever his private appreciation of the menu may be, that prelate has learnt the wisdom of never expressing it publicly. In the same way, a teaching Professor who expresses his opinions is liable to have them served up to him in perpetuity by students in examinations.

Just the same, I must confess (howbeit hesitantly) that I regard Professor Paton's self-denying ordinance as almost an abdication of the

1. [1915] V.L.R. 520.

proper function of a Professor. It is important, but not sufficient, to teach how to think, or what to think about. No generation can start *in vacuo*—it must necessarily build, to some extent at least (even unconsciously), on the thought and traditions of its predecessors. To say that " the purpose of teaching is not to dictate dogmatic answers " is itself a dogmatic answer. Dogmatic answers are the necessary consequence of thought. Thought is not an end in itself, a mere mental exercise devoid of conclusion or practical consequence. We have in our own day seen the terrible practical consequences of the " academic " " racism " of Rosenberg or of Hitler's *Mein Kampf*. It may be permissible to argue whether 2 and 2 makes 4 or 5, but it is surely desirable for the student to know which is the right answer, and equally surely, therefore, the teacher should express his opinion. It may be objected that Jurisprudence is not a precise science like mathematics, and that there are many matters in Jurisprudence on which argument and speculation are permissible, matters on which, perhaps, an open mind must still (for a while) be kept. But my point is that it is not the function of a mind to remain indefinitely open, any more than it is that of a mouth. Both ultimately fulfil their proper function by closing on something—of course after due scrutiny of the matter presented for their consumption. A mind is a room, not a mere passage. *Audi alteram partem* is the duty of every judge, but ultimately the judge must give a decision between the parties. And surely the function of the teacher is not merely to set out the problem, but also to indicate (without forcing it down the students' throats) the answer, or at all events what he believes to be the answer. Austin, it may be noted, styled his book " The Province of Jurisprudence Determined." Austin may have been wrong on many points, but the very definiteness of his conclusions provoked analysis and research into the conclusions he stated, and he is still the peg on which most subsequent English writers of Jurisprudence have hung their texts. Which suggests that an answer (even if tentative only) is better than no answer at all.

I am not unmindful of the fact that this is a book written primarily for students and therefore " limited " (as the author states) " by consideration springing from the capacity of the undergraduate mind." But evidence of the capacity of the author to make plain the fundamental problems of the law to the minds of his readers—whether undergraduate or not—is so abundantly present in the book, that I have ventured to voice the foregoing criticism of what is (I repeat) an extraordinarily good book, in the hope that one day Professor Paton will eschew his self-denying ordinance and state the conclusions which at present he has refrained from stating.

The conclusions he has stated in his book are in themselves sufficient guarantee that the conclusions he has withheld will, if and when ultimately presented, command respectful and careful consideration.

To sum up : Edition I of this book merits, and ought to (and I hope will) receive good sales and careful study by the students and the profession.

Edition 2 will, I hope, follow in due course, embellished with the conclusions at present withheld, and be even better.

M. V. McINERNEY.