

BOOK REVIEWS

Jurisprudence in Action: A Pleader's Anthology. 1st Edn. (Baker, Voorhis & Co., Inc., New York, 1953), pp. i-xii, 1-494. Australian price £3 3s.

It is a common lament of the contemporary preacher that society is increasingly at the mercy of the expert, the man who knows more and more about less and less. The quiet leisurely days, when the man who did things was also competent to judge what should be done, have been replaced by this bustling, hurrying, busy twentieth century, when a man must work so hard to master any professional technique that he has no time to wonder whether that technique is a good thing. Thus many scientists—until the atomic bomb woke them from dreaming—considered their sole duty to be the development of better ways of killing people, and that the control of these methods was wholly outside their responsibility. Again, two world wars have in their early stages revealed the dangers of being led by generals who have competently mastered their technique, and have forgotten that the world has changed in the thirty years since they did so. The farmer who is too busy farming to ever read an agricultural journal wonders sadly, like the little girl in the well-known soap advertisement, why his neighbour's crop is so much richer than his own. And so, we are told, that busy figure the practising lawyer is too overborne by the detail of professional life to have time or inclination to step back and see law large, and see it whole.

This book has been produced by that eminently practical body, the Bar Association of New York, in the belief that this accusation, perhaps true of some, is not true of all lawyers. The sub-title, "A Pleader's Anthology", reveals its purpose—to provide the busy lawyer, especially the court-room barrister, with a vintage selection of twentieth century American and English writings connected with litigation and the inhabitants of the courts. Eighteen essays have been collected from the pens of seventeen authors (Judge Learned Hand appears twice), among them some whose names run wherever the Common Law runs—Holmes, Maitland, Vinogradoff, Pollock, Holdsworth, Cardozo, Pound—others whose fame is eclipsed only by the long shadows cast by these immortals.

Some of the Essays concern the lawyer's everyday work. The late Mr Justice Shientag, of the Supreme Court of New York, writes on Cross-examination from the viewpoint of one who has sat on the Bench for twenty years. The most experienced barrister will come to no harm in reading the kind of things he knows but notices that other barristers often forget; neither will he regret reading John W. Davis, sometime Solicitor-General of the United States, on

The Argument of an Appeal, or that essay beloved of students, Professor Goodhart's *The Ratio Decidendi* of a Case.

Again, courts contain not only barristers, but judges, and any judge will enjoy reading (one hopes rereading) Pollock on Judicial Caution and Valour, Learned Hand on The Contribution of an Independent Judiciary to Civilization, or Cardozo's Law and Literature.

But law is more than mere courtroom technique, and men have spent lifetimes searching for insight into the philosophy of law, to find, in Shientag's words, "what law was, where it came from, what it is doing, and where it is going". Here are garnered some of the fruits, Ames on Law and Morals, Holmes' The Path of the Law, Pound on the Philosophy of Law, Cohen on Law and Scientific Method, and Radin on The Permanent Problems of the Law.

And there is much beside. There is nothing reprinted here which has not stood the test of the years, and if the lawyer questions the relevance of any such writings to his tasks, he may be answered in Holmes' words,

"If a man goes into law it pays to be a master of it, and to be a master of it means to look straight through all the dramatic incidents and to discern the true basis for prophecy."

Unwittingly, this book illustrates the disconcerting lack of juristic work by English writers of this generation. Of the British writers represented, only Professor Goodhart (American born, at that) is alive today, and he is represented by an essay written in 1930. The fact is that a generation has gone by without any appreciable addition being made to the literature of jurisprudence by an Englishman writing in England. When there is joined to this poverty of the local product, the appalling and frightening insularity of English law libraries and the run of English law teachers, the outlook for the next generation cannot be said to be any brighter.

There is little danger of such an enervating insularity in Australia, where student, teacher, and practising lawyer are continually and inevitably using English as well as Australian (to say nothing of other) sources. There does remain among the practising lawyers, as there always will among busy men, the danger of too intense absorption in the minutiae of daily toil, too little attention to the gradual movements of the law. Beautifully printed and easily handled, "Jurisprudence in Action" comes as a welcome antidote. The greatest judge may turn to his judgment with a fresh eye, after Cardozo's analysis of judicial styles, the style magisterial or imperative, the style conciliatory or modest, the laconic or sententious, the conversational or homely, and the rest. The youngest barrister should ponder deeply the same judge's story of the barrister who argued clearly and briefly:

"He told us his point and sat down. The audience in the rear of the court room might not applaud, but the audience in front did—at least in spirit—and since the latter audience has the votes, it is best to make your play for them."

The Editors have wisely added little to the essays themselves. A brief biographical note on each contributor, and they have stood aside to let him speak for himself, without making any such foolish attempt as to indicate where Holmes was "wrong" or where later research has proved that Maitland "erred". Writers such as these need no support; they stand by themselves, and the wise lawyer will light the fire, take up this book, and listen to them again and again.

S. E. K. HULME

The Province of Jurisprudence Determined and the Uses of the Study of Jurisprudence, by JOHN AUSTIN (Weidenfeld and Nicolson, 1954), pp. i-xxxii, 1-396. English price 12s. 6d. (our copy from the publishers).

The editors of the new Library of Ideas are to be commended for making available this attractive and moderately priced edition of Austin's lectures, in which is also printed his essay on the "Uses of the Study of Jurisprudence".

The Introduction to this edition by H. L. A. Hart, Professor of Jurisprudence in the University of Oxford, contains a brief but valuable evaluation of Austin's contribution to juristic thought with a conclusion which is worth quoting:

"Austin has been accused of many sins; some of them he certainly committed. But the demonstration of precisely where and why he is wrong has proved to be a constant source of illumination; for his errors are often the mis-statement of truths of central importance for the understanding of law and society . . . His work still has its angry critics and its stubborn adherents. And never since his death, has it been ignored." (xviii).

Professor Hart has included a most useful bibliography of comment and criticism on Austin, which in itself is a sufficient recommendation of this edition to the student of jurisprudence.

R. L. SHARWOOD

Paley on Summary Convictions and the Magistrates' Courts Act, 1952. 10th Edn., by EDWARD HUGHES and A. C. L. MORRISON (Sweet and Maxwell, London, 1953), pp. i-xx, 1-471; The Law Book Company of Australasia Pty. Ltd. Australian price £5 5s.

The first edition of Paley was published in 1814, and the ninth in 1926. Over this long period it preserved its character as a leading general treatise on this important area of the criminal law. The tenth edition, however, has varied this pattern. The Magistrates'