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Book Review. Jurisprudence, Men and Ideas of the Law by Edwin W. Patterson

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

As Professor Patterson states in the preface to his book, the difficulty confronting a student beginning his study of jurisprudence is that "every book or article on the subject presupposes the reading of a dozen others." Thus there has been a need for an introductory textbook to guide the beginner through the maze of confusing and seemingly contradictory jurisprudential thought. Not only is Professor Patterson's book sufficiently explicit to provide this needed orientation, but it also furnishes a comprehensive explanation of the significant theories of and about law which the author states is its primary purpose.

The book begins with a brief explanation of the meaning of jurisprudence and its relationship to philosophy and science. Parts II, III, and IV are entitled respectively, "What is Law," "What is the Law," and "What Should be the Law." In Part II, Professor Patterson introduces the reader to the conceptions of law held by the ideal, institutional, and imperative schools of jurisprudence, and indicates that these conceptions have reference to the basic relationship of law to an ideal (highest reason, justice), to society (Volkgeist and the "living law"), or to the state (sanction of state authority). In this connection, the contributions of John Austin, Hans Kelsen, and Eugene Ehrlich (among others) are presented. In addition, an analysis is made of the meaning of a legal norm. Part III turns to a consideration of the sources of law. Here the author discusses legislation, case law, custom and morals as sources of law, and presents the opposing views of Oliphant and Goodhart concerning the problems involved in the application of judicial precedents. Part IV embraces the material on legal philosophy. Included are interesting and informative descriptions of the natural law school, Kant and the Neo-Kantians, the historical school, evolutionary theories, utilitarianism, pragmatism, sociological jurisprudence, and the American legal realists. The book closes with a section on the judicial process wherein conflicting views on the much mooted question of how judges decide cases are presented.

While the above description is necessarily brief, it does serve to indicate the comprehensive scope of the book. Prior to its publication, teachers of jurisprudence had to choose between a book of selected readings, such as HALL or COHEN AND COHEN, or the use of a textbook, such as PATON or CAIRNS. The difficulty involved in the use of selected readings is that most students simply cannot understand the significance of short excerpts from books or severely edited articles. The result is that the teacher is forced to spend most of his time in explanatory lecturing and a fruitful classroom discussion of problems raised by the particular article is precluded. On the other hand, the books of Cairns and Paton, excellent as they are, do not have the comprehensive coverage which seems desirable. The solution to the problem is the use of Patterson's book in conjunction with selected readings. This should free the instructor from much of the burden of explanatory lecturing, and permit him to concentrate on the

task of developing the significant problems of jurisprudence and the solutions to these problems proposed by philosophers and students of the subject. As Jerome Hall has suggested, the teacher's objective should be a ". . . thorough analysis of jurisprudential ideas, an absence of authoritative determination, and a cultivation of the speculative mind."¹ Of course, it is not suggested that the use of Patterson's book frees the instructor of the duty of developing a philosophy of his own. A mere repetition of the explanations in the book makes the course dull and uninteresting, and moreover, indicates to the student that it makes little difference what theory is adopted. On the other hand, the instructor who develops an integrated philosophy (original or borrowed) can stimulate discussion by relating the various "schools" to it. Again quoting Jerome Hall, "It is possible greatly to increase the significance of the major jurisprudential ideas and to avoid a sterile history of legal philosophy if the instructor parallels the materials with apt lectures and comments which will be his own viewpoint."² The expression of the instructor's viewpoint should not have as its purpose indoctrination, but rather should have as its aim the encouragement of students to think out and develop a philosophy of their own.

While the book is primarily designed for the classroom, lawyers and judges should find much of interest not only in the theoretical discussions, but also in the many concrete illustrations which the author uses to indicate the significance of jurisprudential ideas in the solution of practical legal problems. Perhaps Professor Patterson is right in his supposition that professional philosophers may find certain distortions in the treatment of the subject matter. Certainly there will be disagreement over some of the author's conclusions. This in no way detracts from the over-all merit of the book. Within a comparatively few pages are presented the mature reflections of one who has devoted many years of profound study to the subject. A careful study of his conclusions is a rewarding intellectual experience.

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¹ Hall, *The Places and Uses of Jurisprudence, Introductory Remarks*, 1 JOURNAL OF LEGAL EDUCATION, 475, 479.

² *Ibid.*