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Review of Jurisprudence: Men and Ideas of the Law, by E. W. Patterson

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It is evident that Professor Kelsen's book is not to be lightly placed in the hands of the uninitiated as an "introduction." For the advanced scholar, it provides a challenge to the critical faculties and an example of both the rewards and the limitations of analytical jurisprudence.

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

Ordinarily one would expect the Reviews Editor of a law review to invite book reviews from men with special competence in the respective fields covered by the books. That the Columbia editor departed from this expectation in the present instance may not have been inadvertence. Edwin Patterson's jurisprudence text is not written for the savant so much as for the tyro. Whether it is meaningful and useful as intended can be judged best, perhaps, by one who himself has scarce crossed the threshold of this discipline.

Jurisprudence: Men and Ideas of the Law was written as a textbook for students enrolled in Columbia's jurisprudence course. It appeared first in mimeograph in 1940, and has gone through three revisions before emerging in its present printed form. Thirteen years is not a record incubation period, but it typifies the care and thoroughness with which Professor Patterson works and with which he has prepared the present volume. Each sentence, each paragraph, each section is, to me, a clear statement of his meaning and serves his purpose well.

What is his purpose? His own answer is, "To present concisely and clearly the ideas of the legal order and the general theories about law which have been and are most influential on the law of the United States. . . ."¹ Professor Patterson assumes aright that the first thing the apprentice needs when he begins a serious exploration of the province of jurisprudence is a systematic exposition of first principles and basic concepts. Accordingly he locates the province of jurisprudence and classifies jurisprudential ideas into the various schools. The author apparently recognizes that the law school course in jurisprudence is all too often a prolonged bull session in which are aired the prejudices of a more or less informed teacher and the off-hand reactions of the students. This may not be wholly without value, because it stimulates thought about serious and worthwhile questions. But undisciplined, uninformed discussion produces results of lasting consequence only fortuitously. It is trite but true that unless we build upon the experience and knowledge and insights of our forebears, we have unnecessarily to ex-

1. P. vii.

plore a lot of not-so-virgin territory. Professor Patterson's book is an excellent antidote for this tendency. Similarly, the lawyer or judge who decides to remedy some of the jurisprudential omissions of his preparatory years needs an orderly presentation of what the best minds of the ages have had to say about the legal order. From there he must rely upon his own intelligence and curiosity.

The Patterson book, then, is directed to the person, lawyer or otherwise, who wants to acquire within reasonable compass an accurate and orderly knowledge of the principal problems of jurisprudence. In my judgment the book fulfills its purpose.

There seems to be an accelerating tendency toward specialization in the practice of law.² In this context, it is more desirable than ever that a lawyer take a look at the legal system as a whole. For those who may be skeptical about the values of jurisprudence, Professor Patterson seeks, with considerable success, to make them articulate.³ Some of the values are practical in the sense that they pertain to the so-called bread-and-butter level of law work, such as understanding particular legal problems or gaining insights into the thinking of specific judges and lawyers. Some are practical in that they relate to broader areas of specific accomplishment, such as Savigny's influence in deferring adoption of a German code—a "mere" philosopher of the law affecting its course materially.⁴ Again, one may better understand the development of American legal education and perhaps American law itself when he sees how neatly the early American law teachers fitted into the historical school of jurisprudence.⁵ As for the least tangible values, hear the author:

To these vocational inducements one more may be added. Why should one enter the profession of the law unless one seeks, in addition to the means of livelihood, a lifelong opportunity to pry beneath the welter of statutes and decisions and to see the law as a part of a larger whole? Not since the eighteenth century (in the English speaking world, at least) has the literature of jurisprudence been more seething with ideas. Some of these ideas will help shape the law and the society of the future. Through jurisprudence you may look at life in society and, like O.W. Holmes, you may catch an echo of the infinite.⁶

Philosophical concepts require illustration if they are to be remembered long. To the extent permitted by limitations on length, Professor Patterson gives examples from legal materials (some 250 cases are cited) and from common situations and incidents familiar even to the layman. The breadth

2. Indeed, the American Bar Association has established a committee to study the problems and relative merits of specialization of law practice.

3. See especially §§ 1.00, 1.10.

4. § 4.31.

5. Pp. 418, 420.

6. P. 4.

of citation to other writings—jurisprudential and otherwise—is suggested by the length of the table of “Books and Periodicals Cited”: 24 pages. The value of the book as a text and as a reference work is enhanced by thorough indexing. Nevertheless, for more extensive illustration and for highly desirable primary sampling of the writings of the important jurists, it has been necessary to refer the reader to original sources or to anthologies such as Hall’s *Readings in Jurisprudence* or *Readings in Jurisprudence and Legal Philosophy* by the late Morris and Felix Cohen. Professor Patterson’s book might be used without more, but it will be rare that the reader is not stimulated to explore beyond it.

Although this is primarily a book about (other) men of the law and their ideas, the author makes his own position evident from time to time. While he usually states both sides of a controversial question, he nevertheless writes from his own rather than a “neutral” point of view, and does not hesitate to criticize and on occasion to demolish that which he deems unsound.⁷ This has its dangers for the neophyte, but they are outweighed by the advantages of this approach, for a liveliness otherwise lacking is provided, and the good sense of the criticisms is generally apparent. In a brief passage of his book, Professor Patterson summarizes his own philosophy of law in a manner similar to his statement in the 1941 symposium, *My Philosophy of Law*.

One highly trained in jurisprudence may find the book something less than challenging. Indeed, this charge I have already heard. It is true that Professor Patterson does not write with sweep. Nor does he rely on exacerbation to force the mind to action as do, say, Jerome Frank or Karl Llewellyn. But there is, to me, real interest and challenge in a readable, understandable, straight-forward account of the ABC’s of jurisprudence. It is for material of this kind that we are most indebted to Professor Patterson. I think it neither unfair nor presumptuous to suggest that he will not be known as a towering legal philosopher in the sense that he has “created” any new school of legal thought or even added significantly to our store of specific insights into matters legal and philosophical. Indeed, he describes himself as an eclectic in these matters, and it is obvious that his choices have been heavily influenced by association with Roscoe Pound and John Dewey. Yet he who organizes, exposes, and criticizes the ideas of others, and so enables us to know and perhaps to comprehend—he is in a very real sense a philosopher, a jurist, and most of all a teacher. That this last is reward enough for Edwin Patterson I have no doubt.

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7. See, e.g., the severe and effective criticism of Savigny and the historical school in § 4.31.