

## BOOK REVIEWS

*A Text Book of Jurisprudence* by SIR GEORGE WHITECROSS PATON, (4th ed. edited by G. W. PATON and DAVID DERHAM, Oxford, at the Clarendon Press, 1972), pp. v-xvii, 1-659. Recommended price \$14.45.

In the twenty-eight years which have elapsed since its first publication, in 1946, *Paton on Jurisprudence* has become firmly established as one of the leading text books in the field. It has won wide acclaim not only in this country but abroad. The contents of the fourth edition, edited by Sir George Paton and Vice Chancellor Derham, are not likely to diminish the esteem in which the work is held.

The scheme of the book remains the same, the chapter headings and sub-headings within each chapter remaining virtually unaltered. Those who, like the present reviewer studied jurisprudence under Professor Paton will readily recognize that the book follows the scheme of lectures delivered by him at the University of Melbourne. What has been done, substantially, is to take account of recent decisions and literature as well as some recent commercial developments and scandals, e.g. the affairs of Reid Murray Holdings Ltd and its subsidiary companies in Victoria and the reports presented thereon by Messrs B. L. Murray Q.C. and B. J. Shaw.

The topic just referred to supplies an instance of the rewriting which has occurred in the latest edition. As might be expected, the difficult topic of the relationship of law and morals, on which Lord Devlin and Professor Hart have joined issue in recent years, has been substantially rewritten, with a wealth of citation of recent professional and academic literature and decisions of the court. In this context it would seem that more account has been taken of the English decisions than those of Australian courts, the decisions of the High Court on the subject of obscenity attracting virtually no comment.

One would have liked to have seen the views of the editors on the problems, in relation to international law and municipal law, raised by the recent wave of hijacking of aircraft and as to whether hijacking could be dealt with as contrary to *ius gentium* in the same way as piracy is. But probably the relevant parts of the text of the fourth edition were written before the steep increase in the number of instances of hijacking made more urgent the need for some acceptable international consensus as to trial and punishment of offenders.

In the same way, no doubt, rewriting (for a fifth edition) of the section relating to national security as a sub-heading of social interest (para. 37 of the text) might take in a discussion of the problems raised by the Watergate scandals in the United States. To say these things, however, is to say no more than that there is in the case of every book a deadline for publication, and *a fortiori* for the writing thereof.

A detailed review of this edition, covering as it does so many fields of law and legal philosophy would take more space than is available for this review. It is perhaps sufficient to say that impinging, as it does, on so many aspects of the law, the book is a veritable gold mine of citations of authorities and academic writings on many points on which it becomes, from time to time, necessary to go back to first principles and underlying legal philosophy. A convenient illustration of this is the discussion—in the section relating to Kelsen's theory of law—of the decisions, as to the validity of decrees of the Rhodesian courts made after the unilateral declaration of independence of Rhodesia. Both the decisions of the Rhodesian courts (upholding validity) and of the Privy Council (denying validity) may be regarded as illustrating, in their different ways, the validity of Harrington's famous couplet:

Treason doth never prosper. What's the reason?

If it doth prosper, none dare call it treason.

Altogether apart from its use as a student's text book, the latest edition of *Paton on Jurisprudence* will continue to be a valuable source of material for a practitioner searching for guidance as to fundamental principles underlying the problem in some case which he is currently arguing before a court, particularly an appellate court. An examination of the Victorian reports and of the Commonwealth reports would indicate that previous editions of this work have, on a number of occasions, been cited both before the Full Court of the Supreme Court of Victoria and before the High Court of Australia. This is not surprising, because the book assumes a great deal of knowledge of the law—perhaps even more knowledge than is possessed by a final honours law student, assuming this to be possible! To this extent perhaps, the work is not suitable for use as a student's text book until final year law, although, as previous reviewers have pointed out, there is much to be said for the view that a systematic study of the whole framework of the law, such as is undertaken by Professor Paton, should be undertaken at the outset of the law course. There is something to be said for this view. However this may be, a study of the whole science of law and of its general underlying principles and philosophy, such as is undertaken in the subject of jurisprudence as taught in Melbourne University and as expounded in *Paton on Jurisprudence*, is an almost essential rounding off of good legal education at the University.

In reviewing the first edition of this book<sup>1</sup> I expressed regret that Professor Paton had refrained from expressing his own views on many subjects and had contented himself merely with setting out the differing views of various writers on the matter. To a very large extent, that self-denying ordinance is still adhered to by the present editors. Where the editors express their own views, it is usually by way of critique on the views of others. The overall effect therefore is that of a very general and sometimes quite cursory critique on the writings of others on jurisprudence. At many points one would welcome a treatment in greater depth such as is found in Friedman's *Legal Theory*. Often also, the general conclusions expressed by the editors tend merely to show how difficult it is to arrive at definitive views on the particular topic in hand, rather than expound the editors' own views on the particular matter. So that while the book emerges as one in which the principle writings in the field of jurisprudence are collated and examined and discussed there is still a great diffidence about venturing to make an independent contribution to the science of jurisprudence. Which is a pity, because the authors have, and are widely believed to have, the talent and the learning to make such a contribution.

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<sup>1</sup> (1947) 3 *Res Judicatae* 112.

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