which he has drawn. Furthermore, this final chapter should invite the question, "Is our own way of doing things necessarily the best?" For the one certain advantage of comparative law is that it is able to stimulate an interest in the way in which lawyers elsewhere have made solutions to problems familiar to us. That their solutions may seem unsatisfactory or even absurd to us is unimportant, provided we have honestly made the effort to understand them.

In the end, however, it is Roman Law that claims the day and Professor Lawson ends with "an earnest plea for a return to Roman Law". Now many other places may well contend with Michigan for recognition as a wilderness, but the bare fact remains that Professor Lawson's voice must cry there not only the dates of composition, but also the very meaning of "Institutes", "Digest" and "Codex".[2] Moreover it seems that in the U.S.A. some fragments of Buckland's Textbook need the *imprimatur* of the Cambridge University Press.[3] What here appears to be needed therefore is not so much a return to Roman Law as a textual exercise with "*ne plus ultra*" tagged on to Justinian's works, but to Roman Law as a "continental history", an academic subject in which classical, Justinianic and modern Roman Law may be presented with equal emphasis. In the achievement of such an objective, Professor Lawson's book would be foremost in the field.

J. A. ILIFFE*

*Selected Topics on the Law of Torts*, by William Lloyd Prosser. Ann Arbor, University of Michigan Law School, 1953. xi and 627 pp., with indexes.

In his preface to the fourteenth edition of Sir Frederick Pollock's classic textbook on the Law of Torts, the editor confessed that he had felt some difficulty about the American authorities. He pointed out that Pollock had in the first edition made considerable use of such authority by way of illustration, but that, as years went on, he seemed to have come to the conclusion that the disconformity between different jurisdictions in the United States was reaching such a point that it was of very little use to continue to collect American cases, and he added very few in his later editions.[1] In the posthumous editions of Pollock's work the editor has therefore not attempted to keep the American citations up to date, following in this respect the policy adopted in other traditional English torts textbooks such as Salmond and Winfield.

Yet the picture thus suggested of an increasing divergence in the American and English streams of common law studies is by no means as definite as we might imagine if we confine our attention to the long established English textbooks. In the preface to his *Law of Torts* published in England in 1955, Professor Street observed that in his work "the influence of the American Restatement, and of the great line of transatlantic teachers, Bohlen, Harper, Prosser, Seavey and Wright, will be readily discovered." [2] And we may confidently anticipate that the same influences will be even more readily discernible in the forthcoming substantial Australian work on the Law of Torts by Professor J. G. Fleming. The truth seems to be, paradoxically enough, that the very disconformity between the American jurisdictions which diverted Pollock from the study of American cases has indirectly led in our own times to a renewed Commonwealth interest in the American scene. The multiplication of authorities in

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[2] See 10-11. The Basilica apparently do not need such treatment (139).
[3] See 117 and compare 139, 140. Pollock and Maitland's *History* seems also to be affected (185).
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[1] Sir F. Pollock, *Law of Torts* (14 ed. 1939 by P. A. Landon) vi.
[2] Harry Street, *The Law of Torts* (1955) v.

America led to the development in the nation-wide law schools of techniques to deal with this situation, involving a freer approach to the authorities than we are perhaps accustomed to in this country, a substitution for simple reliance on precedents of reference to the considerations of justice appealed to by the courts or suggested by the facts of the cases and an emphasis on the experience represented by a precedent rather than on the binding character of the words in it. Faced as we are ourselves with growing numbers of authorities as the years pass, it is not surprising that Commonwealth lawyers should be casting an eye increasingly on the American techniques. If we are not presented to the same degree with a problem of multifarious jurisdictions, at least we are presented with a problem of dealing with authorities belonging to different periods of time and rapidly changing social circumstances, and with a current situation in which our own courts, particularly the English Court of Appeal, are adopting a broader approach towards the assessment of the significance of previous authorities.

On the other hand, it is not surprising that the influence of American ways of thought should be looked on in some quarters here with suspicion, of which the reviewer confesses to his share. The yardstick of justice varies from person to person and group to group even more than the length of the Chancellor's foot, and reliance on it might well lead, it would seem, not merely to the destruction of certainty in the law but to the destruction of the English substantive legal tradition to which all parties to the methodological controversy pay at least lip service.

It is in respect of this problem that the reviewer finds the greatest merit in the work under review. The author subjects some of the most fundamental doctrines of the law of torts to the most searching examination in the light of their appropriateness to the objects which the law serves, yet repeatedly finds that the fundamental notions embodied in the rules are sound, whatever criticisms may have to be directed at particular points to mistaken judicial interpretations or formulations of those notions. In this way the author enables us to see how frequently a constant reference to considerations of the interests involved may be reconciled with respect for the broad lines of authority and the preservation and strengthening of tradition. Nowhere is this approach more successful than in the author's treatment of the vexed subject of "Business Visitors and Invitees". Part of the conclusion may be quoted in explanation of the point the reviewer seeks to make:

> It is surprising how much may sometimes be discovered by reading the cases. When, in the development of a rule over the course of a century, the courts have assigned a particular reason for it, it need not necesssarily be concluded that that reason is the only one, or that it is the right one; but surely it is entitled to respectful consideration, and to some attempt to discover what it means, and what may lie behind it. By and large the courts have not talked of business interest or expected financial gain; they have talked of invitation. Invitation is an unfortunate word. . . . But the idea which it conveys, of encouragement to enter under circumstances which carry an implied assurance of care taken to make the place safe for the purpose, is essentially sound.[3]

Whether the solution suggested on the particular topic will be endorsed by our own courts as the true meaning of the authorities remains to be seen, but in any case the possibility opened up is an encouraging one. The author's chapter "Palsgraf Revisited" illustrates the same approach whereby the authorities are critically examined and what in the author's view really lies behind what the courts have said is exposed and approved. He ends the chapter:

> What we are left with is at most an approach to the problem, an attitude, a beginning—a vague, rough and general statement of what we

[3] At 300.

are looking for. For this purpose, I doubt that all the manifold theories of the professors really have improved at all upon the old words "proximate" and "remote", with the idea they convey of some reasonable connection between the original negligence and its consequences, between the harm threatened and the harm done. In other words, if there is a conclusion, it is that the courts may very possibly have been right all the time after all.[4]

Likewise, in his chapter on *Rylands* v. *Fletcher* the author enters upon a cogent vindication of the principle understood by reference to what he takes to be its true scope and application after a consideration of the interests it serves.[5] Here again, his formulation may not be precisely what our courts will ultimately accept, and in other branches of the law of torts, for instance in relation to contributory negligence,[6] the author does not pretend to be able to find a dominant tradition in the authorities which can be regarded as embodying a sound fundamental notion. But enough has been said to indicate that in these pages there is much to encourage those who hope that in a difficult period of readjustment techniques of re-examination of the authorities in terms of the interests they serve may not carry judges and lawyers along the path of disintegration of the common law of tort.

W. L. MORISON*

*English Studies in Criminal Science: Mens Rea in Statutory Offences*, by J. LL.J. Edwards. London, Macmillan & Co. Ltd., 1955. xiv and 297 pp. (£1.14.9 in Australia.)

*Mens Rea in Statutory Offences* is a welcome eighth volume to the series entitled *English Studies In Criminal Science*, edited by L. Radzinowicz, LL.D., and published under the auspices of the Department of Criminal Science of the Faculty of Law, University of Cambridge.

*Actus non facit reum nisi sit mens rea*, to extend fully the maxim contained in the author's title, is a principle of the criminal law which has been marked by many vicissitudes in its application to new offences created by statute.

As a principle of the common law it required that a crime to be such involved something more than a vicious act. It was necessary also that the act be accompanied by a vicious will.

The need to prove a guilty state of mind has not always, however, lent itself towards efficacy of enforcement. For some considerable period in the history of English statute law therefore *mens rea* as an ingredient of statutory offences has been a matter of some interest to legislators who have often weighed heavily on the scales in favour of the public interest to be served by remedying the evil attacked rather than in favour of the morally innocent individual subject. The judicial approach to the many statutory inroads on the principle can by no means be called a re-action. In many instances, now over many centuries, the orientation (except in the graver class of crimes) has often been in the direction of construing statutory offences as being of absolute liability.

In an attempt to formulate some guiding principle on the topic, Dr. Edwards has selected a wide variety of statutory provisions enacted over the

[4] At 242.
[5] Ch. III.
[6] Ch. I.
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