by reference to the judge who gave them[23], but the authors concede that there is far too little material here to form a basis of useful inference as to the leanings of individual judges.[24] Nevertheless, as long as the demand for this kind of material persists, so long may we expect the material to be accumulated through successive editions, with progressively greater influence towards standardisation. But it is a process which, the reviewer feels, arises out of an unfortunate situation and leads to arbitrariness, however consistent with itself the arbitrariness may be.

A word of speculation may be added in conclusion as to the prospects of a similar compilation of New South Wales awards. Whatever use it might be to enable practitioners to predict awards there seem to be factors militating against the use of such a compilation to provide a stabilising influence. The chief of these lies in the fact that in New South Wales the usual tribunal for the assessment of damages for personal injury is the jury, whereas in England it is the judge. A list of jury awards in former cases could hardly be evidence for a later jury. It is difficult to imagine that even the view of an appeal court that a particular sum was too large in given circumstances would be regarded as proper material for a jury in a subsequent comparable case. Hence such a compilation could only exercise a stabilising influence as between decisions of appeal courts. And while appeal courts here, like those in England, show an interest in the removal of anomalies, there seems to be some difference of opinion as between the Full Court and the High Court as to what is the proper average to strike. The proposition advanced by Street, C.J. in the Full Court appears to be that the average of jury verdicts before the war with some correction for money values is the appropriate one as contrasted with the present-day run of jury verdicts.[25] On the other hand, Dixon, C.J. has indicated that verdicts before the war were perhaps unduly low because the jury was subject to the influence of sympathy for a defendant who had to pay the damages out of his own pocket.[26]

In these circumstances, prospects for standardisation in New South Wales do not seem too bright, even if standardisation on the basis of some kind of existing average figure were regarded as a desirable object. But the truth seems to be that in New South Wales as much as in England standardisation of awards on the basis of some existing average would be an escape from, and not a solution of, the problem of what is a just amount in a given case. A fundamental solution can only be found by reviewing the worth of the principles both of substantive law and assessment of damages in the light of the growth of the insurance principle. It is comforting to observe that in the current number of our brother law review, *The University of Western Australia Annual Law Review*, these fundamental problems receive extended, learned and incisive discussion.[27]

W. L. MORISON*

Jurisprudence in Action: A Pleader's Anthology: Legal Essays Selected by the Association of the Bar of the City of New York, with a Foreword by the Hon. Robert H. Jackson. New York, Baker, Voorhis & Co., Inc., Australia, Law Book Co. of Australasia Ltd., 1953. ii and 494 pp. (£3/3/0 in Australia.)

Of a volume entitled as ambiguously as this one the Reviewer must hasten to say that its production is a tribute to the enterprise of the Association of the

[23] Appendix B, at 417-421.
[24] At 4.
[25] *Hately* v. *Allport* (1954) 54 S.R. (N.S.W.) 17 at 21-23, discussed (1955) 1 *Sydney L.R.* 384.
[26] *Pamment* v. *Pawelski* (1949) 79 C.L.R. 406 at 411.
[27] R. W. Parsons, "Death and Injury on the Roads" (1955) 3 *Univ. W.A. Annual L.R.* 201.

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Bar of the City of New York in what might be called the "adult education" of the common lawyer. The Committee on Post-Admission Legal Education of that Bar Association has thus brought to fruition a project of the late Justice Shientag to provide a collection of articles "constituting in a true sense outstanding examples of legal literature". We may then understand the term "Jurisprudence in Action" to indicate that the writings here selected for inclusion represent thought concerning law, and lawyers, and the tasks of lawyers, which do something more than merely apply the crafts of the practising lawyer.

That is not to say that the contents of this volume have no direct bearing upon these crafts, much less that they are designed to serve as mere adventitious cultural ornamentation. Quite on the contrary. A number of the contributions such as those of Charles P. Curtis, "A Better Theory of Legal Interpretation", John W. Davis, "The Argument of an Appeal", Justice Shientags' own "Cross-Examination — A Judge's Viewpoint", Lord Macmillan's "Ethics of Advocacy", and Benjamin Cardozo's "Nature of the Judicial Process", may be regarded as in the nature of manifestoes which in their time were pointed at some of the essential processes of legal craftsmanship, and have undoubtedly given new directions to some of them. Essays such as these, indeed, warrant the generic title "jurisprudence in action" in the fullest sense, by reason of the depth of their analysis and the breadth of their vision, together with the power they have demonstrated of fructifying the approach of lawyers and judges to the performance of their everyday tasks. They exemplify admirably the power of "jurisprudence" to make a difference to legal practice.

It is quite obvious, however, and frankly admitted by the compilers, that the volume as a whole does not execute any such coherent plan — that it is, indeed, a rather "mixed bag". There are some essays here which were clearly included as contributing not directly to the craftsmanship of the lawyer, but rather as reminding him that the law which he manipulates is, after all, but a specialised form of social control; that its story is ever entangled with changing systems of morality; that its present state is only fully understood by the light of remote as well as proximate history; that its solutions are not of the order of absolutes, whether of logic or mathematics or of ethics or natural law and theology; that they are not stateable merely in terms of immediate practical consequences, but (in Holmes' words) are ever giving back to us "an echo of the infinite, a glimpse of its unfathomable processes, a hint of the universal law". In this category, for instance, the reader will here find Dean Ames' somewhat dated "Essay on Law and Morals" summoning law professors to the tasks of ethical improvement of the common law; Morris Cohen's careful delimitation of the applicability of "scientific method" to legal problems, both practical and theoretical; Holdsworth's sharp cameos of Holt and Mansfield; Maitland's seminal prologue to a history of English law, and Vinogradoff's essay on Maitland himself, together with Mr. Justice Holmes' inevitable "Path of the Law" and Roscoe Pound's "Do We Need a Philosophy of Law?"

Between these two main groupings lie perhaps two essays which by the very depth of their insights and the drive of their curiosity transmute philosophical and practical problems into each other. In Cardozo's "Law and Literature", that courageous and still lamented spirit invites us, apparently, to an outing with the Muses on Mount Olympus; yet before we return homewards we find ourselves in discourse with judicial minds, great and less great, of all ages and of most types. We have even learned to assess their discourse by standards intensely relevant to forensic success. And we understand, perhaps for the first time, the importance for the practitioner of Henry James' truth that "form alone takes, and holds and preserves substance, saves it from the welter of helpless verbiage that we swim in as in a sea of tasteless tepid pudding".[1]

Similar in its remarkable power is the essay by Judge Charles E. Clark,

[1] Quoted on p. 32.

former Dean of the Yale Law School, on "State Law in the Federal Courts". Dean Clark, however, reverses the order of surprises from that of our outing with Cardozo. Setting out with Clark on what promised to be a dull and technical expedition to explore the impact of *Erie Railroad* v. *Tompkins*[2] on *Swift* v. *Tyson*[3], we find ourselves, long before the homeward trek, wandering amid lofty vistas commanding the nature and functions of law, the judicial role in tempering law with justice, and the relation of judicial creativeness to the *Volksgeist* and to the law which springs from the *Volksgeist*. Dean Clark was apparently just finishing this piece of writing as World War II drew to its close, and he was perhaps unnecessarily moved to "Erieandtompkinate" even the meaning of atomic weapons for the more perfect union planned by his forefathers. But he has shown us so much more than we ever had a right to expect, that we can look even on that as manifesting qualities of the heart without reflecting on those of the mind.

For scholar, student and busy practitioner alike, this volume makes available in convenient form some essays of the modern period which, though they are already approaching the stature of classics, have up to now lain scattered in back volumes of reviews, introductions to larger volumes, or proceedings of bar associations, and the like. To have on hand the full text of Cardozo's main theses on "Law and Literature" and the "Nature of the Judicial Process", of Holmes' "Path of the Law", and of Maitland's "Prologue to a History of English Law", would itself warrant the moderate cost (as prices go) of this volume. But the purchaser gets substantial bonuses as well. The British lawyer not yet familiar with the judgments or writings of Judge Learned Hand will certainly never again pass them by after reading his "Contributions of an Independent Judiciary to Civilisation". And while the English lawyer might not feel a great deal of interest in the problem of the "State Law in Federal Courts" or in the reality of that "brooding omnipresence in the sky" which Holmes was concerned to debunk, the careful Australian or Canadian lawyer will leave the reading of Dean Clark's essay on that subject a wiser (and certainly an unsurer) man.

There is, of course, room for wide divergencies of opinion as to what should or should not have been included in a volume of the present design. British and American lawyers respectively will not take with equal seriousness the respective theses of Goodhart's "*Ratio Decidendi* of a Case", of Radin's "Permanent Problems of the Law" or, for that matter, of Charles P. Curtis' "Better Theory of Legal Interpretation". Yet when all national as well as personal divergencies of interest have been discounted, the volume retains so full an amplitude of ideas, and so warm an inspiration about the tasks and techniques of lawyers, as to place it firmly and well-thumbed on the lawyer's shelves wherever the common law is practised, learned and loved.

JULIUS STONE*

Criminal Law: The General Part, by Glanville L. Williams, LL.D. (Cantab.), Quain Professor of Jurisprudence in the University of London; of the Middle Temple, Barrister-at-Law. London, Stevens & Sons Limited, 1953. xliv and 719 pp. Index. (£4/8/0 in Australia.)

The purpose of this work, which is the fourth major contribution to the learning of the common law emanating from Professor Williams' pen, is "to search out the general principles of the criminal law, that is to say those principles that apply to more than one crime." Like his other contributions, the book displays on every page evidence of the author's great industry, tireless research, and ingenuity of reasoning. And as with his other works, the author

[2] (1937) 304 U.S. 64. [3] (1842) 16 Pet. 1.

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