tive bibliography. The author's style, however, tends to be loose and repetitive. Typographical errors were noted at pages viii (where 'Section 59' should read 'Section 51'), 47, 55, 141, 152, 157, 164, 178, 185, 195 and 196, and grammatical errors at pages 41, 58, 64, 137, 143, 161, 164, 252 and 253. The book also suffers from grossly inconsistent and improper use of the comma, at pages too numerous to mention, which necessitates frequent re-reading. Italics and capitals are also employed inconsistently. In some places the same common noun is capitalized at one point but not at another on the same page, as at pages 137 and 138.

In summary, the author has succeeded significantly more in his treatment of the factual side of his subject than in relation to its normative aspects. The book will be useful to international lawyers and others seeking to understand treaty-making procedures and practices and certain parts of it should be found interesting by Australian legal and political historians. But it is questionable whether anything has been said that could not equally well have been said, and with far greater economy, in two or three law journal articles.

NEVILLE CRAGO

JESTING PILATE and other papers and addresses. By the Right Honourable Sir Owen Dixon. Collected by His Honour Judge Woinarski. The Law Book Company Ltd. 1965. Pp. 275 (including table of cases and index). $6.60.

Sir Owen Dixon served as a Justice of the High Court of Australia for a period of thirty-four years, for the last eleven of which he was its Chief Justice. Long before his retirement in 1964 he was acclaimed, by a profession which has never been noted for the unanimity of its views, as the greatest jurist in the English speaking world. His service on the High Court was interrupted during the Second World War when, from 1940 to 1942, he served as Chairman of the Central Wool Committee, Chairman of the Australian Shipping Control Board and in various other offices, culminating with his appointment in 1942 as Australian Minister to Washington, which position he occupied during the critical years of the war in the Pacific until 1944. Subsequently, in 1950, he acted as United Nations Mediator in the Kashmir dispute between India and Pakistan.

Quite apart, then, from its intrinsic value, which is very considerable indeed, this volume of papers collected by His Honour Judge Woinarski of the County Court of Victoria is of great interest in that it reveals to us far more of Sir Owen Dixon's personal views than can be found in the pages of the Commonwealth Law Reports. The volume covers the period from 1933 to 1964. It includes orations, papers presented to Conventions of the Law Council of Australia and addresses to bodies such as the American Bar Association, the Medico-Legal Society, the Australian Chemical Institute and the English Speaking Union in Melbourne. There is, inevitably in a collection of papers such as these, a considerable amount of repetition and overlapping of subject matter, and many will have read or heard a number of them previously, but the papers never lose their interest and constantly remind the reader of the extraordinary range of intellectual interests enjoyed by their author.

The majority of the papers are, as might be expected, concerned primarily with legal issues; but certainly not the least interesting are those on international affairs, comprising the addresses on 'International Relations', given in 1949 during International Affairs Week at the University of Melbourne, and on 'Roosevelt and Hopkins', which was the subject of the 1953 Arthur E. Mills Memorial Oration delivered at Hobart upon the invitation of the Royal Australasian College of Physicians. Sir Owen Dixon came to know both Roosevelt and Hopkins during his term of office in Washington as Australian Minister. Harry Hopkins, he records, was not liked by his own countrymen, and it was a widely held view that at best he was an ill-balanced, unpractical visionary exercising nothing but an evil influence upon Roosevelt. Sir Owen did not share this view of the man, but rather that of Winston Churchill who regarded him as the prop and animator of the President and as playing a decisive part in the whole movement of the war. He last saw Hopkins in September 1944 when, it is interesting to learn, Hopkins told him that he wished Australia to take a conspicuous part in the Pacific in what was to come, because he thought it important for Australian prestige in the post-war world that she should do so. This view was not apparently shared by those who determined the course that the Allied offensive was to follow.

On international affairs in general Sir Owen Dixon emphasizes that the great issues cannot be understood without an adequate knowledge of geography, ethnology and history. Heads of governments do not necessarily possess a high standard of knowledge in these fields.

Moreover, in all matters of State it is a melancholy fact, he wrote, that the mass of information available can seldom be assimilated by the mind upon which the responsibility for a decision rests, for that mind is too often of a man at or near the apex. The burden upon him is too great and the information at his command must go unheeded. This is accepted without question at the present day, but it was well worth emphasizing at the time that the lecture in question was delivered, just after the War.

The paper read at the first Convention of the Law Council of Australia under the title of 'Sir Roger Scatcherd's Will in Anthony Trollope's "Dr. Thorne" ' is a delightful essay. Anthony Trollope, he records, took a just pride in the courageous attempt he made in "Orley Farm" to describe the course of Lady Mason's trial on a charge of perjury but, he noted: 'the cross-examination of the great Mr. Chaffanbrass is revolting. His questions are more than inadmissible; they are impossible.' Sir Owen then makes passing reference to the case of Hiram's Hospital in "The Warden" which was referred to the Attorney-General, Sir Abraham Haphazard, for opinion. By his opinion Sir Abraham Haphazard left little doubt that he was a master of Chancery pleading and he concluded that the suit was badly constituted: 'We cannot but respect an Attorney-General who comes down from the cloudy heights where such men move and takes up the firm ground of misjoinder of parties, and bases upon it his advice to a Bishop and Chapter, too.' This is the man whose later opinion is in question in "Dr. Thorne", an opinion given with such assurance and certainty as to bring forth the comment from Sir Owen: 'Perhaps to be five years an Attorney-General produces infallibility even in fiction.' The case itself concerned a codicil made by Sir Roger Scatcherd. The testator left his property in the events that happened to "the eldest child" of his sister Mary. When he made his Will he did not know that her eldest child was illegitimate, but subsequently Dr Thorne told him the true facts and he therefore made a codicil saying no more than that Dr Thorne and Dr Thorne alone knew who was his sister Mary's eldest child. In the novel, four eminent counsel hold that the estate, which was in excess of £200,000, passed to the illegitimate child. Sir Owen Dixon himself considers the problem and advances inexorably to the contrary conclusion, a conclusion, however, which, one must assume, would not have been acceptable to Trollope. The paper then concludes by expressing thanks to Trollope 'for providing a very difficult question which is covered by no

authority, a question which involves a number of basal principles in the law of wills.'

In the paper on 'The Development of the Law of Homicide', *Woolmington v. Director of Public Prosecutions,* [1935] A.C. 462, is subjected to scrutiny and undoubtedly shown not to be in accord with authority. Sir Owen refers to Lord Sankey's celebrated dictum on 'the golden thread' as 'possibly more eloquent than exact'. His conclusion, however, was that notwithstanding all of this the result was satisfactory, and he suggests that we should not inquire too closely whether it was reached by the trodden paths of the law, although this was, of course, precisely what the author had just done.

Australia's debt to the Constitution of the United States is a recurring theme in the papers, although at the same time Sir Owen Dixon draws attention to the important distinctions between the constitutions of the two countries. For example, in the paper on 'Two Constitutions Compared', which was an address to the American Bar Association, he refers to the American emphasis on the freedom of the individual, and to its regard for formal guarantees of life, liberty and property against invasion by government, as being indispensable to a free constitution, and observes that the framers of the Australian Constitution were not prepared to fetter legislative action except to the extent necessary for the purpose of the distribution of legislative power between the States and the central government. They felt no need for provisions directed to the control of the legislature itself. Sir Owen finds that the central point of Australian political beliefs has been faith in the soundness of the opinion of the majority of the electors as a means of solving any large political question, and the need of providing constitutional machinery to ensure that, when occasion demands, the opinion of people is ascertained, and when ascertained is carried into effect.

For him, however, the fundamental distinction between American constitutional theory and our own is the existence in Australia of an anterior law providing the sources of juristic authority for our institutions when they came into being. In America, in the case of the original States and of the Union itself, the authority for the establishment of their constitutions is ascribed not to the operation of existing law but to the will of the people. Their first constitutional law accordingly possessed an original and not a derivative authority. This is, he considers, the basal reason why in the Supreme Court of the United States and in Federal Courts generally the common law as it exists in each of the States is treated as a different system of

jurisprudence 'possessing a different content and subject to different interpretations'.

The view that the whole body of law in Australia is antecedent to the work of any legislature is emphasized in a number of the papers, and this leads on to the contention that the courts as a whole must interpret and apply the whole body of law so that there should only be one judicial system in Australia, a system which is neither State nor Commonwealth but a system of Australian courts administering the total body of the law. They should administer the law of the land independently of its source, and should notice the source of a statute only for the purpose of ascertaining whether, considered territorially, it applies to the facts. It may be cause for some regret that we are not progressing along these lines at the present day.

The address 'Concerning Judicial Method', delivered at Yale on 19th September 1955 on his receiving the Henry E. Howland Memorial Prize, provided Sir Owen Dixon with an occasion for restating many of his views on the subject. In particular it contains a most interesting comment on the rule in *Foakes v. Beer,* (1884) L.R. 9 App. Cas. 605, and, one assumes, *Central London Property Trust, Ltd. v. High Trees House, Ltd.* [1947] K.B. 130, although the name of the latter case is never mentioned. (Was it perhaps regarded as unmentionable?) Equity, he said, once began to develop a doctrine of making representations good, but it was afterwards condemned as an attempt to find a promissory obligation where there was no contract. Might, he suggests, 'an innovating court discover in the constituents of this discarded doctrine a means of holding the creditor precluded from the assertion of his claim? Or would it be enough to appeal to the injustice conceived to result, and so, without doctrine or other rationale, pronounce against the claim? A court prepared to act merely on its conception of justice or social convenience might adopt any of these experiments.' He then proceeds to indicate in masterly fashion how, by still adhering to the traditional conceptions of the judicial method rather than by what Cheshire and Fifoot describe as 'the exercise of a beneficent ingenuity', a similar result could have been obtained, and leaves the reader in no doubt as to which of the methods he prefers.

Sir Owen Dixon pays generous tribute to other judges such as John Marshall, Felix Frankfurter and Sir Frederick Jordan, and, as one might have expected, Sir Leo Cussen. He also, on the occasion of the conferring of the honorary degree of Doctor of Laws in the University of Melbourne, recorded his great debt to two of his teachers,

T. G. Tucker and Sir William Harrison Moore, in whose schools the University took such pride. In all this he reveals his great modesty, a virtue which has not often been a characteristic of great jurists of the past—or the present.

Sir Owen's dry humour is constantly revealed in these pages in a way in which it was not often revealed in the Commonwealth Law Reports, however frequently it might have appeared in the course of argument. Collectors of phrases will find a great deal of material here. There are to be found comments such as the following:

> It cannot be that the development of the law was hampered because counsel was confined to addressing the court and could not appeal from the judge's rulings to the greater learning of the jury—a practice not unknown in the antipodes.
>
> In Australia where every lawyer's library contains the Appeal Cases and some lawyers occasionally read them. . . .
>
> The interest of a litigant in truth and justice can be understood for he is seldom cynical enough to distinguish them from success in his suit.

Also, speaking of the notorious Section 92 of the Constitution which declares that interstate trade shall be absolutely free:

> It is a provision which apparently must forever be expounded but never explained.

This book is one which should be read by every Australian lawyer and not merely by those whom the dust cover describes as 'persons of cultural tastes'. It serves to increase still more one's appreciation of and admiration for a great judge.

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