Legal System and Lawyers' Reasonings, by JULIUS STONE, LL.M. (Leeds); S.J.D. (Harvard); B.A., D.C.L. (Oxford); (Maitland Publications Pty Ltd, Sydney, 1964), pp. i-xxiv, 1-454. Price £4 4s.

I recall the first appearance of the *Province and Function of Law* of which the present work is one of the successor books. We were students doing, because we had to, jurisprudence and finding it a chore. A collection of bits and pieces, it seemed, thin in intellectual interest,

nor practical to the stern needs of law. We were old enough to perceive that it might have significant challenges, with an important legacy of truth. But the books were dull, and the lecturer perhaps no less bored with it all than we were ourselves. Friedmann's *Legal Theory*, it is true, gave us something to think about; but it was a book (it is no condemnation to say this) more addressed to the political scientist than to the lawyer as such. And to be lawyers pure and simple was the one bit of positivism we had completely absorbed.

The *Province and Function of Law* shattered this smug superiority. It revealed, to some of us literally for the first time, that jurisprudence was, or could be, a subject of great seriousness: serious, for one thing, in its scholarly demands; serious, for another, because of the profound and difficult questions it raised about law. It was almost disturbing to realise that Austin and Kelsen were not just old hat, that Hohfeld was not simply a mathematician *manqué*, that to explore logical forms in law was not just a continental pastime and that even common law harboured problems not always reducible, often even rather resistant, to English empiricism or common sense.

The new book, the first of a trilogy, reworks the Province's first part, while two further volumes will succeed its second and third. The first part, it will be remembered, dealt with law as logic which now appears in greatly extended form. In its detail and scope, indeed, the new book is something of a *summa*, trying to encompass nearly every relevant contribution, nearly every point of view. Thus Professor Stone not only (as before) deals with Austin, Kelsen, Hohfeld, not only (as might have been expected) covers recent English and American writing, but extends attention to virtually the whole of recent continental legal philosophy, notably the works of Engish and Esser, Klug and Bobbio as well as Viehweg and Perelman. The work of these (and, in particular, of the last two) is of the greatest interest, work which is little known and which at least some of us will be grateful to be introduced to. Nor is Stone merely acting as *rapporteur*. He has a good eye for the weaknesses in some positions, for the sometimes unrecognised strength in others. For example, I think he is right to criticise Hart's 'rule of recognition' as a replacement for Kelsen's *Grundnorm* (the author would here have been assisted by a review of Hart's book in *Mind*). I am sure that he is right to be a little suspicious of Esser's castigations of 'logification' and so on. And I am very sure that Stone is again right to suggest, this very gently, that Karl Llewellyn's jurisprudence provides more mood than analysis.

Still the many virtues of the book must not hide certain defects. The book is so overlaid with information that its new or original themes and arguments scarcely get a chance to breathe. Speaking broadly, the book falls into two principal parts. The first is concerned with the logic of law, of describing or defining a legal system as well as the many failures to define it 'properly' or 'purely' or 'strictly'. Hence all we can do, says Stone, is to indicate certain *propria*, serving as indices to a definition, not constituting a definition itself. But even

if true that a definition of complex phenomena cannot be short or self-sufficient, but has to be argued or explained at length, this is still not to say that law cannot be defined. Moreover, even a definition that remains vague or in outline, is not for that reason useless or incorrect, simply because (as Wittgenstein says somewhere) we would describe a person at a distance rather differently from one who is near. I make this point not so much for its own sake as to ask what status or force a *proprium* could otherwise have? If it is to be characteristically descriptive of anything, it cannot be tentative, though it can be vague. Again, if law is part of a 'coercive order' is this just one of seven, rather than the most significant of all seven or more, *propria*? And if it is the latter, and if 'coercive order' presumes (we are told) sanctionability, are we not committed, indeed recommitted, to make the best of the imperative theories, that is treat them as corrigible, however inadequate?

The second part of the book concerns logic *in* law. Taking just one general point, one cannot but agree with Stone that the doctrine of precedents is not all that it is classically supposed to be. Yet while important to stress its logically non-stringent or non-compulsive character, if only to accommodate judical law-making (or, if you like, legal growth), it is no less important to stress another or residual feature of the doctrine that requires us to treat similar cases similarly. Nor is it completely helpful to regard *stare decisis* as mainly a case-coordinating activity. The latter means to rearrange or repattern cases, rearrangements which would help ('more than is imagined', as Austin said) to see whether a case falls within established principle or whether it is so entirely novel as to call for a creative choice. However, to the extent that a case does fall or come within existing principle, the doctrine is satisfied. Of course it is always important to remind especially common lawyers that the growth of law is an act of creation which involves the making of choices, which in turn may contain subtle and complex components of justice and wisdom, of ideology and practical needs. One indeed very much looks forward to the forthcoming volumes that will deal with these components at length. In the meantime one may perhaps be permitted just this plea. Would that one could look forward to the day when Professor Stone would write away from his books and his notes: to give us the unincumbered benefit of his private intelligence which his extraordinary industry has so amply prepared.

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