

Professor Sawyer, at the end of his book, suggests that it seems impossible that law and lawyers should ever again be inattentive to the social relations of law or to the part which natural science and systematized social knowledge can play in solving legal problems. It is to be hoped that this judgment is well founded and certainly this book will assist in transforming it from a prediction into a reality. It is thus to be welcomed and strongly recommended to every lawyer, whether he be judge, practitioner, or student, who is interested in something more than the technical practice of his profession.

PETER BRETT\*

*Human Law and Human Justice* by JULIUS STONE, LL.M. (Leeds); S.J.D. (Harvard); B.A., D.C.L. (Oxford); Sydney. Maitland Publications Pty Ltd, Sydney, 1965, pp. i-xxiii, 1-415.

This is the second of what Professor Stone calls the 'successor volumes' of *The Province and Function of Law*; the first of them, *Legal System and Lawyers' Reasonings*, was reviewed by Dr. Stoljar in this Review.<sup>1</sup> As the latter book was a rewriting of Part I of *The Province and Function*, so this is a new version of its Part II, there called "Law and Justice". Considerable parts of the earlier text are reproduced and the original framework followed (in both cases, however, with much rearrangement and revision), but this is in effect a new and independent work. A very great deal of new material has been introduced — partly in extension of the scope of the original version (e.g., the chapters on the idea of justice in Greek mythology and philosophy and in early Jewish thought); partly to take account of original work that has appeared since the publication of *The Province and Function* (e.g., the examination of work on law and justice by British and American analytic and linguistic philosophers); partly also to take account of new scholarly and critical work dealing with the great figures in the history of legal philosophy; and partly by way of elaborating and deepening the discussion of men and subjects already considered in detail in the original work. The most notable examples of this are, perhaps, the very substantial development of the discussion of natural law in which Stone now not only deals with natural law as a historical tradition, but also examines it much more closely as a philosophical-legal doctrine in its own right and considers much more minutely the natural law theorising of quite recent times; and also the much closer and fuller examination of modern legal relativism. But there is hardly any part of the earlier book that has not undergone some amendment or development.

It is more than twice as long as the section in *The Province and Function* from which it derives. But wider scope and greater length are not the most striking difference between the two versions. Most of the text,

---

\* LL.B. (Lond.), LL.M. (W. Aust.), S.J.D. (Harv.), Professor of Jurisprudence, University of Melbourne.

<sup>1</sup> Vol. 1, No. 2.

most of the thought, has gained perceptibly in depth, weight and solidity: it is a much riper book. To this reader it is fascinating and of great value because of the enormous volume, range and variety of the literature of legal philosophy, in four or five languages, that Stone brings into critical view; and this reader also often felt that that mass of literature had been more perfectly digested or assimilated than was sometimes the case in the earlier volume. But, more than this, *Human Law and Human Justice* manifests a wider intellectual span: a firmer and broader grasp of the philosophical or theoretical pattern, and, above all, a greater speculative boldness in exploring independently large themes and issues, though it remains true that Stone's great talent is perhaps critical and synoptic rather than originative. The reviewer did not attempt a close comparison of the two texts, but it seemed that in the present version the exposition of the positions of others is often closer, and the critical argument also very frequently closer, more elaborate and more definitive. Indeed, it seemed to me that it is on its critical side and in its substance first rate: in a work of this scope it would be scarcely possible to improve upon the thoroughness, solidity and often great acuteness of a multitude of theories of justice. From this point of view his book is of the first order of importance. The presentation is not as impressive as the substance. Apart from the heaviness and complexity of style, arguments are sometimes drawn out to excessive length; and Stone has not avoided the difficulty to be anticipated in a book in which many writers and positions are examined in historical progression — a considerable amount of repetition of the author's own forms of argument and theoretical stances. The book suffers also perhaps from the aspiration to be exhaustive and from some uncertainty about its function or its 'public': is it primarily a definitive textbook, a work of reference, or a contribution to original thought? It is meant, one imagines, to do all three jobs; and this may be why there is rather too much very compressed exposition and discussion of writers of great philosophical difficulty and obscurity; for instance, it is hard to know what a reader not already possessing considerable philosophical knowledge and understanding would make of the extremely compressed discussion of German existentialism;<sup>2</sup> and this reader found very difficult some of Stone's later argument with the modern British linguistic philosophers. The very great contribution Stone has to make would stand out even more clearly if his text were pruned. Still, in spite of all blemishes, one can only admire and wonder at the massiveness of his contribution to the critical understanding of the philosophy and sociology of law throughout a large part of their historical and theoretical range. It is a great achievement.

On its critical side, the drive and effect of his argument are to damage severely almost all of the so-called theories of justice he examines. These theories (or most of them) are what we should now be tempted to call ideologies — bodies of principles or precepts of very great generality which purport to define in some way the just ordering of human interests and relationships — or, if not principles, highly general methods or

---

<sup>2</sup> pp. 202-207.

procedures to be followed (as in the thought of Stammler and Pound) in determining the just ordering of human relationships. And these theories are concerned, as a rule, to provide also the grounds or justifications for the bodies of principle, the concepts and reasons which are supposed to establish their truth, validity or bindingness. Stone has no trouble in establishing their limitations or their failure; demonstrating the vagueness, indeterminacy or vacuousness of the high level principles, their inability to provide a firm guide to lawyer or layman in the 'search for justice' in the very concrete situations of ordinary social life. Equally, he is generally successful in demonstrating the unsatisfactoriness for the purpose of the supposed foundations of the principles of justice, whether they be 'nature', 'reason', 'civilisation', 'social purpose', 'social solidarity', the 'community of free-willing men',<sup>1</sup> Pound's 'jural postulates' of a particular age or civilisation, or what not. His critical position is similar to that of the modern analytical philosophers who have assaulted classical political philosophy. The critical weight of the book adds up to a powerful support for legal positivism in at least some senses of that versatile term.

It is not easy by the end of the book to make out clearly what Stone's own position is on some of the very fundamental questions he has been considering in the work of others. In spite of the damage he inflicts on other attempts to establish very general principles and concepts of justice, it does not seem that he wants to abandon the attempt or to recommend setting out on a quite different philosophical tack. At the very end, he formulates himself a set of nine 'quasi-absolute precepts of material justice in our own time and place.' Thus, he holds that there is at least 'one indubitable minimum requirement of justice as sought through law. This is that society shall be so organised that men's felt wants can be freely expressed, that the law shall protect at least that expression, and provide it with the channels through which it can compete effectively for (though not necessarily attain) the support of politically organised society.'<sup>3</sup> In practice, of course, few of us would dissent. But why is this precept 'indubitable'? It would not have seemed to be indubitable to those good and reasonable men who have thought that an authoritarian or paternalistic society was the just society; it did not seem indubitable to Plato when he wrote *The Republic*. Why is it indubitable *for us*? Professor Stone describes this, and his other eight precepts or directives of justice, as being 'quasi-absolutes'. 'Many precepts', he says, 'to which we currently hold, even if an honest backward glance at history would not have detected them as either actually or potentially present in man's earlier exhibited 'nature', may still have to be declared such as they *ought* to have been universal and ought never again to be lost. We are entitled, in short, after confronting rather than evading the difficulties of intellectual demonstration, to affirm that such precepts are *for us at any rate* absolutes'.<sup>4</sup>

---

<sup>3</sup> p. 332.

<sup>4</sup> p. 340, Stone's italics.

And there, unfortunately, Professor Stone leaves the matter; in spite of his probings into the logical and cognitive foundations of other similar theories, he does not go on to explain how it comes to be, why I should be persuaded, that these directives of his are absolutes for me. Stone's nine directives are similar in form to the five 'jural postulates' for American law which Pound formulated and reformulated from 1919 onwards; but Pound tried to exhibit how his jural postulates were derived; and his theory of justice was in part an argued defence of the concept of 'jural postulates', of his method of deriving them, and of his contention that they provide criteria for justice in a particular time and place. Further, in discussing Pound, Stone has a convincing section headed "Difficulties of a Time and Space Conditioned Criterion" some of the arguments in which might seem, at least in a slightly extended form, to be embarrassing for his own idea of 'quasi-absolutes for us'. It seems strange that Stone should abandon, at the very point where he comes to state an answer of his own to the perennial question, 'What is Justice?', his interest in the logical and epistemological foundation of criteria or principles of justice.

As it is, the argument at least on the philosophical level seems to break off abruptly. It is not satisfactory to the hopeful reader to be informed somewhat bluntly at the end that there are, after all, quasi-absolute principles of justice *for us* — i.e., principles which both are and are not absolute in a completely unexplained sense. What is intended, exactly, in saying that they are not quite absolute but only *quasi*-absolute? It doesn't mean, apparently, the familiar relativist position that they are valid in some way for the historical or social circumstances which happen to prevail in our own time but not for those of other times; because Stone says that 'they ought to have been universal and ought never again to be lost.' Why, then, are they only quasi-absolute; and what is the difference between a quasi-absolute, a full-blooded one, and a principle that is not absolute at all?

The effect of Stone's last dozen pages or so is to leave the reader puzzled about where he really stands on some of the very important problems of the philosophy of laws that he has analysed so elaborately and with such acuteness in the context of the work of other writers. It is very much to be hoped that he will some day succeed this massive work of scholarship and criticism with another in which, free from the murmuring of a thousand other voices, he will set down directly and systematically his own uninterrupted reflections on human law and human justice.

P. H. PARTRIDGE\*

---

\* M.A. (Syd.), Director of the Research School of Social Sciences, Institute of Advanced Studies.