BOOK REVIEWS

Legal Education and Public Responsibility, by JULIUS STONE, Challis Professor of Jurisprudence and International Law in the University of Sydney. (Association of American Law Schools, 1959), pp. i-xiii, 1-430. Price not stated.

The sub-title of this book sufficiently and precisely indicates its scope; it is a report and analysis of the Conference on the Education of Lawyers for their Public Responsibilities, held in 1956 at the University of Colorado.

For many years the legal profession in the United States of America has been increasingly concerned with the question whether the profession is adequately discharging its responsibilities to the public. Let it at once be said that this question is *not* merely whether lawyers are adequately performing the tasks of advising their clients and pleading their cases in court; it is a far wider question. It is based on a recognition of the fact that the law is one of the most powerful and pervasive instruments of social control, and that upon the lawyer rests the primary responsibility for seeing that the state of the law is such that it can properly fulfil this function. It sees the lawyer not as a mere advocate or counsellor, but as the guardian of a priceless heritage, embodying fundamental human—and many would add divine—values. And going even beyond this, it recognizes the fact that many high places of public trust are filled in modern society by lawyers, not because of their special knowledge of the law, but because their techniques and training enable, or should enable, them to think and reason clearly on large issues of national and international policy. Thus the lawyer, from the very nature of his calling, cannot escape a large share of responsibility in the conduct of human affairs, and the question is whether he is adequately discharging this trust.

This question in turn raises a further question for those who bear the burden of training lawyers in the schools. Does the training which they offer adequately prepare the lawyer for the task which willy-nilly he must assume? The Association of American Law Schools has for a long time been troubled by this question, and ultimately it was able to arrange for the Conference, of which this book is a report, to be held, so that different views could be exchanged and all the subsidiary questions and doubts which inevitably arise could be thrashed out. The Ford Foundation made a grant to enable the Conference to be held and the University of Colorado acted as host. There were twenty-two participants, most of whom were law teachers; but they also included four practising lawyers, a Protestant teacher of religion, a political scientist, an officer of a great educational fund, and a physician. Professor Stone attended and took part in the Conference, and later undertook the even more important task of going through the transcript and making from it an organized report of the discussions. This report forms the first eight chapters of the book. These chapters are followed by a long epilogue in which Professor Stone presents his own appraisal of the work of the Conference and of the various themes which were discussed.

It is of course not to be expected that a Conference at which such far-reaching questions were discussed should reach agreement on all issues. Indeed, if agreement were reached, it could, I believe, only be

on the basis of acceptance of a number of pious platitudes. Ultimately, on such questions as these, each lawyer and each teacher must reach his own position and find his own faith. To say this, however, is not to decry the value of the Conference. Such widely diverging views were presented and argued that this book offers a storehouse of valuable ideas, which every lawyer could well afford to peruse, for he will find here enough materials to enable him to paint his own picture. Candour compels me to add that occasionally—perhaps too often—viewpoints are expressed with a heaviness and a woolliness of language that tend to obscure rather than to clarify the basic issues. But priceless thoughts are often cloaked in a somewhat unattractive garb, and this is a small price to pay for the riches which are here displayed.

If I were writing this review for an American audience, it would be proper for me at this point to review some of the main themes and to offer some comments of my own. But I am writing primarily for Australian readers, and to my mind they could well afford to read this book with a different aim in view.

The basic lesson which the Australian legal profession—and for that matter the English legal profession—could profitably extract from this book is that the lawyer has a public trust to fulfil. American lawyers, as a whole, are well aware of the fact that they have such a trust, and for them the key question is how they should go about fulfilling it. But, regrettable though it may be, in Australia and England the legal profession, by and large, does not seem to realize, at the present time, that it has any responsibility for the present state and future development of the law. This point is highlighted by Professor Stone at the end of his epilogue, where, speaking of the United States, he says: 'The Writer can think of no other country, heir to the common law tradition, where so courageous an examination by lawyers of the adequacy of their own contribution to the maintenance and progress of a free society has ever been made, or is even conceivable.'

This is a formidable indictment, but it is difficult to see how its truth can be denied. From the highest to the lowest, our legal profession is permeated with the notion that its sole task is to administer a set of rules provided by an outside source and to fit its clients' affairs into the framework of those rules. Let me stress that I am well aware that there are individual lawyers against whom this charge cannot be made; but I am speaking of the profession as a whole and I repeat that as a whole the legal profession in England and Australia has reduced itself to the status of a body of priests performing a ritual without caring what its meaning may be or even whether it has any meaning at all.

Of course, it has not always been so. In an earlier age, the legal profession was plainly conscious of its trust and of its position as guardians of our heritage of civil liberty. One need only think of the great lawyers of past ages. The present lack of responsibility which our own profession exhibits is of comparatively recent origin. My own belief is that much of the trouble must be attributed to John Austin, who convinced our lawyers that law and morality were utterly distinct and that the lawyer's task was merely to see that the command of the sovereign is obeyed. I am here speaking of the way in which Austin has been understood by later generations; he was, in fact, well aware that lawyers, as well as legislatures, make the law and thus have a responsibility for its shape, but this part of his message has gone unheeded.

While the judiciary has a creative role to fulfil in the orderly development of the law, it must be conceded that there are some matters from which it should, and very properly does, stay aloof. If this were not so, its reputation for impartiality would be imperilled. There are, however, many questions of a contentious nature which have to be decided and in regard to which lawyers are peculiarly well fitted to give a lead to public opinion. For example, should divorce be obtainable only as a remedy for a matrimonial injury, or should two people whose marriage has broken down be able to obtain a divorce without any enquiry as to fault? Are compulsory blood tests for suspected drunken drivers, and legalized wire-tapping, an undue encroachment on the liberties of the individual? To what extent should doctors be empowered to force blood transfusions or other medical procedures on unwilling patients? Should euthanasia be legalized? What changes or clarifications ought to be made in the law with regard to abortion, sterilization, and artificial insemination?

It is in its failure to come to grips with such questions as these that the organized legal profession has failed, to my mind, in its public duty. There are two ways in which the duty might be performed. The profession might thrash out these problems internally and then make a public statement of its views. Or individual lawyers could go before the public in their capacity as lawyers and urge their individual views. In either event the public would benefit.

There are of course considerable difficulties in presenting a public statement of the views of the profession. On matters such as these, individual members of the profession are likely to be hotly divided, and the statements which eventually emerged would either represent only the views of a majority or be so watered down, to take account of dissenting views, as to be virtually valueless. And it is thus undesirable that the views of lawyers should be put before the public only by means of statements on behalf of the whole profession.

Unfortunately, however, it is not possible at present for the alternative course to be adopted. For individual members of the profession have been effectively muzzled. The Bar, in particular, has over the years built up a series of repressive rules on this matter. In Victoria, it is impermissible for a barrister to deal with a legal subject on either radio or television without the prior consent of the Bar Council—which is far from easy to obtain. Nor may a barrister write to or in a newspaper or non-legal journal on a legal topic without such consent, unless he either suppresses any reference to his professional qualifications or garbs himself with that cloak of invisibility, the *nom-de-plume* 'A Barrister'.

Rules such as these are designed to prevent advertising and touting for business. Such activities are felt to be incompatible with the dignity of a profession which regards itself as learned. And so they may be. At the same time, it is scarcely to be denied that a ban on advertising is designed primarily for the protection of the profession; and it is arguable that such a ban may in the long run prove detrimental to the public interest. I do not stay to pursue this point further, but those who wish to consider it will find some discussion of it on pages 117 to 119 of Professor Stone's book.

Let it be assumed, however, that a ban on advertising and touting is desirable in the public interest. Still, such activities can be repressed effectively without muzzling the whole profession. It is not necessary to

use a steam-hammer to crack a nut. This is not the place to canvass alternative methods of preventing touting. My point is that the Bar has been so concerned with protecting its own professional interests in this matter that it has entirely neglected to take account of the public interests involved.

The late Mr Justice Robert H. Jackson, who not long since graced the bench of the Supreme Court of the United States, once told a story which not only bears repetition but provides an appropriate end to this review. It concerns a man who found himself passing a large group of workmen engaged on a project. He wanted to know what was keeping them so busily engaged, and he approached a workman and asked him what he was doing. The man replied, 'I am earning my living'. This was scarcely a helpful reply, so the man approached another worker nearby with the same question. This time the answer was, 'I am shaping this rough piece of stone into a cube'. Still unsatisfied, the man addressed his question to a third worker. And this time the reply was, 'I am building a cathedral'.

Those who have not learned that they are building a cathedral should read this book, for they may find out in the process. Those who have learned that much should also read it, for they will find within its pages much that may aid them.

PETER BRETT*

Introduction to Jurisprudence—With Selected Texts, by DENNIS LLOYD, M.A., LL.D. (Cantab.), of the Inner Temple, Barrister-at-Law, Quaine Professor of Jurisprudence in the University of London (Stevens and Sons Ltd, London, 1959), pp. i-xxiii, 1-482. Price £3 3s.

In a review of Orvill C. Snyder's *Preface to Jurisprudence*,[1] in 1957, I said, among other things, that it had always seemed to me

> that the book which collects, chronologically and by subject, snippets from the great legal philosophers and jurists, . . . is likely to be a snare for the teacher and a delusion for the student. Such books do less than justice to the authors they quote and, . . . pay unwarranted deference to a 'case method' mystique which prohibits the use of a text-book. The purposes of the 'case method' are not served by substituting for a text-book a book which is made up of snippets from many texts.

An interested reader on first reading Professor Lloyd's *Introduction to Jurisprudence* might well take the view that those words should be eaten by the author of them; for Professor Lloyd's book is certainly not a snare for teachers nor a delusion for students. It is one of the most useful English books available to undergraduate Jurisprudence students. But perhaps those quoted words need not be retracted in such an unpalatable way after all because, as Professor Lloyd himself takes care to say in his Preface, the aim of this book is not the same as that of the collections which I was criticizing and in it most of the vices which prompted my criticism have been avoided. Professor Lloyd says in his Preface:

> this is not a book of readings on the American pattern, though it obviously owes a good deal of inspiration to that familiar transatlantic

* S.J.D. (Harvard), LL.B. (London), LL.M. (W.A.); Barrister-at-Law; Senior Lecturer in Law in the University of Melbourne.

[1] (1957) 1 *M.U.L.R.* 127, 128.