

which he is discussing as having made a great and abiding contribution to civilized thought. He may well be right in this, yet my own feeling at the conclusion of grappling with the wealth of ideas appearing in these pages is rather one of despondency that so much thought on the part of so many should have produced so little. The grand theories which are expounded seem to contribute little in practice to the everyday problems with which we are confronted in the task of trying to resolve disputes between individuals. This, indeed, is perhaps the shortcoming of all theories of justice. They attempt to provide guidance in a god-like manner for settling the laws which will govern the behaviour of the entire human race. Such a task attempts far too much and the results of these labours become attenuated to such a degree of abstraction that they seem to have comparatively little practical influence on the work of legislators. This same degree of abstractness prevents these theories of justice from being of any real assistance in the everyday work of courts and similar tribunals at points where guidance is needed.

To say this, however, is not, of course, to criticize Professor Stone in any way. He has magnificently accomplished what he set forth to do, namely, to put before his reader the results of human endeavours to formulate adequate theories of justice. He is to be congratulated on the success of his attempt and the work can be warmly recommended. In putting it down, one can only express the hope that the author, who modestly keeps his own views partly concealed in his discussions of the work of other thinkers, will one day assemble for us and set forth his final reflections and views on the nature, tasks, and aims of the law.

PETER BRETT*

The Enforcement of Morals, by LORD DEVLIN (The Oxford University Press, London, 1965), pp. i-iv, 1-139. Australian price \$4.12.

It is some measure of the importance of the questions which arise under the title of this book and of the widespread interest in those questions, that the Oxford University Press decided to publish it six years after Lord Devlin delivered the lecture from which the title is taken.¹ It is, perhaps, even more such a measure that large numbers of undergraduate students of philosophy, ethics, political philosophy, and jurisprudence all over the English speaking world seem now to be asked by their teachers to read this book.

When Lord Devlin delivered his 'The Enforcement of Morals' as the second Maccabaean Lecture in Jurisprudence he did not have to wait very long to have his views challenged. While Professor H. L. A. Hart was, no doubt, his leading critic, a number of other distinguished writers took time to examine Lord Devlin's thesis. This volume of seven essays² was put together in the light of those criticisms, and the author lists (page xiii) the articles known to him which contain criticisms of his originally published views. All of the essays after the first were originally prepared as addresses to be delivered to quite a wide variety of audiences, and they were delivered after Lord Devlin had been made aware of the criticisms

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¹ Maccabaean Lecture in Jurisprudence read at the British Academy on 18 March 1959 and printed in the *Proceedings of the British Academy*, vol. XLV, as 'The Enforcement of Morals'.

² Of which the Maccabaean Lecture referred to is the first—now entitled 'Morals and the Criminal Law'.

which his Maccabaeian lecture had aroused. In particular, the last two essays (VI. 'Mill on Liberty and Morals'; and VII. 'Morals and Contemporary Social Reality') were prepared, at least in part, specifically in reply to the criticisms.³ One of the results of that history seems to be that it is the first essay, and the sixth and seventh, which are of most significance. The others are rather slight pieces, relying on no particular scholarship, and suitable for the occasional purposes for which they were apparently prepared.⁴

In such a review as this it is not possible to explore either the details of Lord Devlin's arguments or the reasoning of his critics. It is perhaps enough to say that the exchanges were begun by Lord Devlin's decision (when he was invited to deliver the Maccabaeian Lecture) to examine some of the fundamental questions of law and morality which underlay the Report of the Committee on Homosexual Offences and Prostitution (known as the Wolfenden Report). He says himself, in the preface to this volume, that he began his examination in a state of complete approval of that Committee's formulation of the functions of the criminal law in matters of morality: that is, that there are or may be areas of private morality (or could one say 'immorality') which are not the law's business. But he came, in the course of his examination, to believe that he had been wrong and that the Wolfenden Committee had been wrong. The first chapter in this book sets out the reasons which brought him to his change of view; and which brought him to the conclusion that there is no area of morality which, in the light of some overriding principle, can be put beyond the reach of enforcement by law. He organized his argument by seeking the answers to three questions:—

1. Has society the right to pass judgment at all on matters of morals? Ought there, in other words, to be a public morality, or are morals always a matter for private judgment?
2. If society has the right to pass judgment, has it also the right to use the weapon of the law to enforce it?
3. If so, ought it to use that weapon in all cases or only in some; and if only in some, on what principles should it distinguish?

He answered the first two questions: Yes; and as to the third he said that the distinction should be drawn in each case on grounds of practical expediency. Thus all morals should come within the area of law enforcement but some immorality could not be proceeded against by the weapon of the law simply because enforcement by law would be too difficult.

Professor Hart published his main criticism of Lord Devlin's arguments in 1963 as *Law, Liberty and Morality*⁵; and, although I agree with many

³ And after Professor H. L. A. Hart's *Law, Liberty and Morality* (1963) had appeared.

⁴ II. 'Morals and the Quasi-Criminal Law and the Law of Tort'

The Presidential address to the Holdsworth Club, Birmingham University, 17 March 1961.

III. 'Morals and the Law of Contract'

A lecture delivered at the Queen's University of Belfast, 2 March 1962.

IV. 'Morals and the Law of Marriage'

The Earl Gray Memorial Lecture, University of Durham, 15 March 1963.

V. 'Democracy and Morality'

The Owen J. Roberts Memorial Lecture, The University of Pennsylvania, 28 September 1961.

⁵ The Harry Camp Lectures at Stanford University, 1962, Oxford University Press (1963).

of the conclusions reached by Lord Devlin, I have no doubt that Professor Hart had the better of the exchange.

Lord Devlin was one of the very best of the most able judges who sat in common law courts during the twenty years since the second world war. Some of his work as a member of the House of Lords will distinguish him for generations to come. His judicial career took him into many jurisdictions including that of the criminal courts. It is disappointing then to find his work, when he ventures into the borderlands of law, philosophy and morals, comparatively undistinguished where analysis was required, and insufficiently backed by an understanding of, and familiarity with, the work of thinkers who had contributed to those borderlands before him. Of course the law rests, in one sense, upon moral and philosophical ideas and beliefs. Moral and philosophical beliefs, in their turn, are affected, changed, and confirmed by the law.

The touch of sadness which a lawyer feels when he sees one of the ablest of his profession shown to be something less than a professional in another, though closely related, sphere of mental activity, does not diminish the importance of this little book nor of the flurry of controversy which it provoked.

DAVID P. DERHAM*

The Idea of Law, by DENNIS LLOYD (Penguin Books 1964), pp. 1-363 (including Index). Price \$1.90.

A very senior member of the medical profession was filling in a few minutes before a meeting. He was reading a Penguin book; and when I asked him what it was, it turned out to be Dennis Lloyd's *The Idea of Law*. He was a man who had been quite remarkably successful in practice; and in his old age not only his own profession but also leaders in other fields had turned to him to take responsibility for the management of many activities important to the community. He was chairman of this and president of that and he had, perforce, become deeply concerned with problems of management and organization almost for the first time in his long life. He told me that Dennis Lloyd's book expounded ideas which were new to him and which were helping him to understand the problems of a complex society in a way he had not thought about before.

Most lawyers, immersed as they are in the intricacies of particular transactions, take very much for granted the broad structures of the legal systems which they serve. And they tend to take for granted the moral and philosophical fundamentals which lie behind those systems and which are assumed by them. They do not often pause to consider how little understood, even by the most intelligent and the best educated of their lay fellows, are the work which they do and the basic ideas which justify that work. They seem to accept, with such equanimity as they can muster, a general lay feeling of suspicion and hostility towards lawyers and their work as something inevitable; something which always has been so and perhaps always will be.

Professor Lloyd has written a book, this book, which although no doubt designed as introductory reading for law students, is well designed for the busy but intelligent layman to read at leisure. It could well be one small influence to dispel some of the suspicion and hostility mentioned above. It is clear and simple. It does not require the reader to repair to

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