

Parliament whose authority in turn derived from an antecedently existing common law, await perhaps the genius of another Dixon for exposition. In his address delivered at Harvard on the occasion of the bicentenary of Chief Justice Marshall (page 166), the author, in the course of a generous tribute to that great American judge and his influence on Australian constitutional interpretation, has provided an interesting study in the exposition of our constitution by the High Court in its earlier years.

The technique of a master steeped in legal history is well exemplified in the papers 'A Legacy of Hadfield, M'Naghten and Maclean' (page 214) and 'The Development of the Law of Homicide' (page 59). In the former—an essay on the law of insanity—he by his researches has shown that M'Naghten's case, which is responsible for much deserved criticism of the legal tests of insanity, had the unforeseen result of imprisoning the common law in a formula and depriving it of an antecedent flexibility which could have done much to meet such criticism. In the second of these papers he has demonstrated in scholarly fashion the weakness of the judicial reasoning in the famous *Woolmington case*² but concludes significantly 'We should be grateful for it and not inquire too closely whether it was reached by the trodden paths of the law'. *De Facto Officers* (page 229) is another paper which displays characteristic depth of learning and research embracing English, American, New Zealand, and Australian decisions, over many centuries.

In lighter vein there is the whimsical paper on Sir Roger Scatcherd's will in Anthony Trollope's *Doctor Thorne* (page 71). The interpretation of that will provided a legal puzzle, uncovered by authority, and involved basic principles in the law of wills.

For a happy ending to the novel a particular interpretation was essential. Fortunately four leading counsel unanimously confirmed that interpretation. With this, most readers would have been content to let things be. No so Dixon. With characteristic ingenuity and a display of legal virtuosity, aided by two centuries of case law, he proved how wrong leading counsel can be. Had counsel given a different opinion and so shattered the happiness of Dr Thorne's beloved niece, one suspects that Dixon would, no less convincingly, have exposed their error.

The foregoing selection of topics from these collected papers fails to do justice to the wider interests of the author evidenced by other papers dealing with lawyers' professional etiquette, the functions and obligations of other professions, and problems in administration and international relations. Last, however, but not least, these collected papers show abundantly that lofty thought and true wit are not ill wedded companions.

While, for the time being, we must be grateful for the publication of this collection, is it too much to hope that, as a more enduring memorial to a judge and jurist unsurpassed in his generation, we shall ere long welcome an edited selection of those great judgments upon which his reputation so securely rests?

A. D. G. ADAM*

Human Law and Human Justice, by JULIUS STONE (Maitland Publications Pty. Ltd., Sydney, 1965), pp. i-xxiii, 1-415. Price \$8.00.

Professor Stone, who twenty years ago published a major survey of the whole field of jurisprudence, under the title *The Province and Function of Law*, has now returned to the task which he then set himself and

² (1935) A.C. 462.

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has published what are described as three successor books to his earlier work, of which this is the second. It will be recalled that *The Province and Function of Law* divided jurisprudential thought and writings into three broad headings which can be sufficiently described as analytical theories, theories of justice, and sociological theories, and the plan of the successor books is to take each of the three parts of the earlier work *seriatim* and deal with it separately in a much expanded form.

This volume, as its name indicates, deals with that branch of jurisprudence which has concerned itself with theories of justice. As with the other volumes in this new trilogy, Professor Stone has not been content merely to take his earlier work and bring it up to date but has rather started anew, and while covering some of the same ground has added a great deal of new material, with the result that we now have on this topic a full and self-contained treatment. He begins with natural law theories of the classical schools, continues through surveys of utilitarianism, solidarism, neo-Kantianism, social idealism, relativism and pragmatism, until finally he gives us his own comments and views on the topics which his survey covers. The immediate impression which every reader will be bound to gain is one of the immense range of ideas and learning which Professor Stone sets before us.

There can, indeed, be no doubt of the value of this work to lawyers and those others who concern themselves, as indeed all thinking citizens should, with the nature of that elusive virtue, justice. Here in one volume Professor Stone has assembled for us almost all the worthwhile conclusions of thinkers from many ages and many lands who have contributed their views on this matter. It must be confessed that at times the reader will find this work heavy going. The author does his best to wrestle with the somewhat abstruse ideas of the more metaphysically inclined thinkers such as Stammler, but he finds it difficult to convey them to the reader with clarity. This, of course, is not from any lack of understanding on his part but springs from the obscurity of the views which he is trying to expound.

Each reader of this work will find for himself his own particular preferences and sympathies. While not necessarily agreeing with the views of the men concerned, I found that in reading the work I particularly enjoyed the author's discussions of Bentham and the utilitarians, of the work and thought of Gustav Radbruch, and of the teachings of Roscoe Pound. In dealing with these two latter thinkers, especially, one has the continuing sense of the author's deep and abiding respect and affection for the men with whose views he is dealing; although he differs from them and points out the weaknesses in their positions, his treatment is always a sympathetic one.

What can one finally say in criticism of such a work as this? The description I have given should suffice to appraise a prospective reader of what he will find within its pages. The book is, of course, very far from being a student's textbook or summary; it is far too elaborate for such a purpose. Yet at the other end of the scale it is far more than a reference book to which recourse is made to ascertain some precise point of information. In this respect it falls a little uncomfortably between two stools. One is constrained to add that the extensive foot-noting on every page and the author's somewhat ponderous style of writing may make it appear at first blush a rather formidable work.

As to the results of the endeavours which these pages survey, again, individual readers will necessarily form their own impressions. One gathers from the author's concluding pages that he regards the centuries of work

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.

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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 Maccabaeian 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 Maccabaeian 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 Maccabaeian Lecture referred to is the first—now entitled 'Morals and the Criminal Law'.