1951

Book Review. Stone, J., The Providence and Function of Law

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significant a conclusion fairly be built on such an insecure base?

**Alphonse B. Miller**

Philadelphia, Pennsylvania


The vogue of oratory and public speech as a characteristic expression of American culture in the nineteenth century has been the subject of many recent investigations. Gradually the whole story, from the flashy performances of political and patriotic orators to the quiet dissemination of ideals through nonpulpit sermonizing, has been assuming shape. This highly limited and specialized study of one phase of the movement has its place in this story.

Mr. Mead takes a single state of the Middle Western group—Ohio—as his field. It is perhaps representative of the other states for the purposes of this study, but it has the additional interest of being the first state west of the Alleghenies to receive, imitate, and reject the influence of Eastern seaboard culture. The period 1850–1870 further limits the study to that part of the process centering on the Civil War period, even though the lecture movement was well established before 1850 and did not cease at 1870. Mr. Mead's evidence is also largely restricted. He depends almost wholly on the reports of lectures as printed in the contemporaneous local newspapers. He does not investigate the lectures themselves in the relatively few instances in which actual manuscripts have survived, nor does he attempt many other means of measuring and evaluating either the lectures or their public reception.

Within these limitations, all of them arbitrary and all of them consistently imposed, Mr. Mead has done a thorough job. For the cultural historian, the most interesting part of his book is Appendix A—"A History of Ohio's Lecture System," a sixty-page essay in which the story is told chronologically, the phases of cultural evolution clearly marked, and the larger implications of the process distinguished. The main body of the book is a series of character sketches of the more important of the lecturers, interesting each in its way, but lacking in social or cultural significance apart from the lecturing experience taken as a whole.

**Robert E. Spiller**

University of Pennsylvania


This book has been reviewed widely and favorably in many journals, and it is without doubt an important work, especially for specialists in jurisprudence and political theory. The author's style is excellent, and he has brought a high order of competence and almost unbelievable industry, extending over a period of fourteen years, to the production of this treatise. Yet it is no adverse criticism of Stone to conclude that, despite its strong points, he might have devoted his efforts and splendid talent to more worthy projects which would give his own thinking better opportunities for adequate expression.

Stone's book is a memorial to Pound and his course in jurisprudence. Anyone who took Pound's course will immediately recognize the familiar names and summaries of the thought of modern legal philosophers—Austin, Roguin, Grotsis, Blackstone, Bentham, Jhering, Stammler, Kohler, Savigny, Duguit, Maine, the theory of interests, and all the rest of the Pound seminar. Stone has rounded out Pound's survey, and he has added detailed annotations and bibliographies. The Pound-Stone summaries and the bibliographies will be helpful to researchers in the field. But the book, from the very nature of its conception, lacks incisive analysis and imaginative formulation of current important problems of legal philosophy.

So far as students and the teaching of jurisprudence are concerned, the Stone treatise can best be used as supplementary reading. History of philosophy is hardly taught in respectable schools as a series of summaries of what Plato, Aristotle, Kant, and others thought. The objective now, at
least on the college level, is to teach students how to philosophize. Stone's book is in the older, outmoded tradition; it is mostly a book about, rather than of, legal philosophy, though he does interpolate his own criticism. Such summarizing, even with the added criticism, does not exemplify philosophical problem-solving. It is far better, in the reviewer's judgment, to have students read the original work of legal philosophers, dead and living, with attention directed to its relevance for current issues and to what is involved in developing and defending one's own legal philosophy than to fill them with summaries that lay it all out digested and "finished."

That kind of instruction has become dated, but obviously it has not been forgotten. What has happened in the past fifteen years in the teaching of jurisprudence cannot be here reported. It must suffice to say that jurisprudence has come to life and is grappling with the major problems of our times. Both the teacher of jurisprudence and his students will therefore prefer fresher waters and the joys of live combat, which the Stone chronicle unfortunately does not provide. This is a regrettable report especially for one who, like this reviewer, admires Stone's scholarship and his clear, facile writing.

Jerome Hally
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"There is a perfect harmony between Aristotle's ethical, legal, and political theory—the theory of the right mean is the basis; philia, social sympathy, is the life force; equity, fairness, reasonableness, and humaneness the leitmotiv; and well-being, i.e., human happiness and perfection, the supreme end."

So states Dr. Hamburger in his concluding paragraph. The main body of the work, subsequent to a brief inquiry into the authenticity of Aristotelian texts and a brief statement of Platonic views on law and morals, is a detailed examination of relevant Aristotelian texts and a comparison of differences in their arguments, together with smaller sections devoted to historical setting and to summary of arguments. It is divided into three sections, dealing, respectively, with "Voluntary Action and Choice (Theory of Culpability)," "On Law and Justice," and "On Friendship (Philia) (Community, Partnership, Contract)."

The author stresses the fact that Aristotle's theory of law is part of and derives from a total theory of ethics and politics. He emphasizes the degree to which the Aristotelian theory of law is permeated by Aristotle's doctrine of the mean; is in its tenor constitutionalist; and is, like all Aristotle's social thought, opposed to a false precision in the name of science which is unwarranted by the nature of human beings, and by reason of that judgment which they must inevitably exercise in the midst of uncertainties. It stresses, again, the fact that law relates intimately to justice and that the two together are at once the foundation and the proper ruling end of the state; it thus shows the continuity between Aristotelian thinking and later Roman law with its Stoic foundations and its dominant concept of equity.

In an interesting summary of his third part, Hamburger also demonstrates how Roman law, thus properly understood, was subsequently misinterpreted, and how, from Bacon to Savigny, the false search for scientific certainty led to a misconception of law, partly overcome by the subsequent efforts of von Jhering, but also offset by legal realism and legal pragmatism (the two are not, he insists, the same), though both these last tended to achieve their work by an illegitimate divorcing of law from its philosophical foundation, and from its proper status as part of a total doctrine of man and society.

The main body of the work will be of interest only to the specialist, though its overall conclusions are of more general concern. The brilliant foreword of just over three pages by Huntington Cairns makes more significant generalizations on the course of development of Western legal thought than one would have believed possible in so brief a space.

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