

BOOK REVIEWS

Justice, by Eugene Kamenka and Alice Erh-Soon Tay (eds.), London, Edward Arnold Ltd., 1979, vii + 177 pp. \$23.35 (hard cover), \$12.95 (limp).

This is one of several volumes in the Ideas and Ideologies series which Eugene Kamenka and Alice Tay have assembled as a result of the International Congress of Law and Social Philosophy in Sydney and Canberra in 1977. Not all of the papers were actually delivered at the Congress, and several which were show the benefits of subsequent revision in the light of the exchanges which that event fostered. But the central core of ideas presented would be familiar to anyone who attended the relevant sessions in 1977.

Eugene Kamenka begins the volume with a paper in which he depicts justice as essentially comprising an intellectual activity and a tradition, rather than a definable idea or ideal. He rejects as a myth the idea that we all share a single, common underlying morality on which an incontestable account of the requirements of justice can be built, and refers in a footnote to the danger of "appealing to socially and historically conditioned expectations masquerading as timeless truths". But the tradition in which he seeks to place justice is an intellectual one, so that it is still incumbent on those who are morally, legally and politically adult to pursue, defend and revise their claims "without having to believe that the design of the universe requires them to be met and that those opposing them are less than human".¹

John Passmore's characteristically lucid paper entitled "Civil Justice and Its Rivals" presents a powerful account of the pervasive political ideal that the grounds for preferential treatment of citizens or groups should be limited to considerations of competence: that is, considerations concerned with the ability of the persons in question to sustain and advance whatever activity is under discussion. After elaborating this ideal, Passmore uses the current debate concerning the extent to which restrictions on immigration are justifiable to introduce and assess the claims of competing ideals. These are identified as communal justice, formal justice, cosmic justice and social justice (seen as recognizing the particular claims of the disadvantaged, and taking at least reparative, levelling and minimalist forms). Passmore throughout manages to be judicious in assessing competing claims without being bland. Not all aspects of the distinctions invoked are fully worked out — for example, Passmore on page 33 both contrasts the

¹ At p. 23.

claims of variety and liberty with civil justice, and states that the concept of liberty lies at its centre. The chapter culminates in a strong statement that we should be prepared to make justifiable distinctions and to defend unequal treatment based on them.

Brian Barry's contribution is also analytical in character and relevant to matters of current interest. The question of what rich nations owe to poor ones, basic to the North-South dialogue, is explored by asking what conception of justice is being invoked when problems of international and inter-generational justice are raised. Barry believes that a notion of justice as reciprocity provides the framework for our ordinary discussions of what justice requires. Accordingly, he analyses this conception, which he depicts as involving the three elements of *requital* (making a fair return for benefits received), *fidelity* (the voluntary carrying out of bargains freely entered into), and *mutual aid* (playing one's part in a practice of helping those in need). The importance of distinguishing these elements, and of giving them separate recognition, is convincingly demonstrated. In the course of this demonstration both Rawls and Nozick are effectively criticized.

But even when these distinct elements are considered, it is concluded that justice as reciprocity is insufficient to support commonly held views about our obligations to other nations and other generations. In the remainder of the paper Barry accordingly develops the further conception of justice as equal opportunity in an attempt to account for those claims which cannot be founded on reciprocity. The notion of equal opportunity is seen as implying equal access to natural resources because at the most general level this ideal embodies a belief that the same abilities and efforts should reap the same rewards. Barry has time only to sketch the implications of this principle for his problem cases, but he says enough to indicate that they diverge significantly from currently recognized international law and practice.

An analysis of contemporary theories of justice from a rather different, but equally stimulating, perspective is given in Wieslaw Lang's chapter on Marxism, liberalism and justice. He begins with a brief account of the Marxist conception, stressing the centrality of the principle of equality of opportunities, and then moves to an illuminating critique of Hayek, Nozick, Rawls and several others. He displays an easy familiarity with conventional criticisms of the views he discusses, but gives more emphasis to their ideological character and to the importance of considering relations of production as well as questions of distribution than has been common in western philosophy. He is careful to separate the question of the ideological character from that of the cognitive value of a theory. Nevertheless he comments with respect to Rawls:

Considering the economic structure of a society to be a problem irrelevant to the question of social justice is a hidden form of

ideological acceptance of the economic structure existing in a given society.²

He concludes from this that the 'ideological conformism' of Rawls' theory to the capitalist economic structure limits its cognitive value.

The second paper written from a Marxist standpoint is devoted to a consideration of egalitarianism. Ferenc Feher and Agnes Heller, both members of the Budapest school who left Hungary in 1977 and are now resident in Australia, depict the drive to equality as a socially valuable monitoring system. They argue that egalitarianism cannot be consistently implemented, but must be recognized as a set of principles which have an indispensable function. The argument of the paper is a determined attempt to work out the conflicting considerations which need to be accommodated in a just society, but it is conducted at a level of theoretical abstraction which makes heavy demands on the reader.

Egalitarianism is viewed less sympathetically by Julius Stone, as his title "Justice not Equality" conveys. Stone also makes demands on his reader, mainly because his argument regularly relies on allusion rather than explicit presentation of his case. But his discussion of the cases of Bakke and De Funis is illuminating, successfully demonstrating some confusion in Dworkin's analysis of the latter. His concluding appeal that we must not "continue to seek shortcuts to justice through mirages hovering over the slough of equality" is memorable.

Alice Tay's paper has a slightly different character, but will be of especial interest to lawyers. Following F. E. Dowrick, she seeks to show that the common law is permeated with a sense of justice. Although there has been an attitude of suspicion towards comprehensive theories of justice, the common law is shown to have developed so as to embody a set of requirements which are recognizable as elements of that justice of which the theories aspire to give an account. The judgment of Lord Denning in *Dutton v. Bognor Regis Urban District Council*³ is quoted extensively as a dramatic illustration.

Overall, there is much that is stimulating and illuminating in this collection. Its editors deserve our gratitude for their enterprise in producing it.

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The Modern Law of Copyright, by Laddie, Prescott and Vitoria, London, Butterworths Pty. Ltd., 1980, lxiv + 733 pp. \$103.50.

It should be made plain that this work is destined to be the classic in the field. There has been nothing like it to date, and the eminence

² At p. 146.

³ [1972] 1 Q.B. 373 at 397-398.

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