BOOKS


The author presents a lot of interesting material, both historical and current, on the topic which he sets out to analyze. He traces the history of protective legislation, restricting hours of work of women and young persons, and also documents the somewhat unenlightened self-interests of powerful employers and trade unions which may have contributed to this development in the 19th century. The grounds for cynicism are reinforced by the exemptions temporarily granted for protective legislation in times of war, when women’s work was required in “men’s jobs” and by the exemptions perenially granted, in England [as in Israel] for work in hospitals or other places where women’s work is considered indispensible. As early as 1850 there was a Women’s Rights Opposition Movement which apparently questioned whether protective measures were truly advantageous to them. The historical material is particularly interesting when one considers that in 1972 Justice Brennan was considered to be making a breakthrough when he commented that discrimination had been “rationalized by an attitude of ‘romantic paternalism’ which, in practical effect, put women, not on a pedestal, but in a cage”.

The author examines the common law and statutory remedies for sex discrimination which were in existence before the passing of the Sex Discrimination Act in 1975. It is largely a chronicle of failures. In 1912 the Court of Appeal rejected an application by a woman to be admitted to the Law Society, and this in spite of the wording of the Solicitor’s Act under which “persons” were eligible for admittance. The court found that only Parliament could change the “long, uniform and uninterrupted usage” whereby women could not become attorneys or solicitors. The Sex Disqualification Renewal Act of 1919, which provided that “a person shall not be disqualified by sex or marriage, from the exercise of any public function, or from being appointed to or holding any civil or judicial office or post, or from entering or assuming or carrying on any civil profession or vocation, or for admission to any incorporated society... and a person shall not be exempted by sex or marriage from the liability to serve as a juror”, although implemented as to its immediate practical aspects, was ignored in its wider potential.
The author's analysis of the current law under the Equal Pay Act, 1970 and the Sex Discrimination Act, 1975 meticulously exposes the inadequacies of the legislation. The founding of a claim for equal pay requires comparison with a "concrete man" and hence does nothing to come to terms with one of the central problems of unequal pay, which is that women are working in underpaid and separate female labour markets. The Sex Discrimination Act, while it includes both direct and indirect discrimination, nevertheless apparently requires evidence of intention to discriminate, thus further weighting the burden of proof which is placed squarely on the shoulders of the victim. The defence of "material difference" is not subsumed in the general definition of discrimination but is painstakingly spelled out by the legislature and, as the author comments, "the overall effect is that the basic principles underlying the legislation have been obscured by a mess of detail and legalistic qualification and refinement".

Although this book is to be welcomed with its critical approach to the half measures and hypocrisies of the current legislation, it partly falls victim to those limitations of "detail" and "legalistic qualifications and refinement" in the legislative approach pointed out by the author himself. The author explores to their logical limits the questions of whether misrepresentation by a person as to his or her sex may contribute a defence against claims of discrimination by that person, or whether the insistence that a man play Hamlet or that a woman be a midwife is a genuine occupational qualification. These problems are, however, surely esoteric. They are especially esoteric against the backdrop of the real widespread inferiority of women's position as regards wages, social security benefits, employment distribution and participation in the professions revealed by the statistical data in the book, when, by the author's own submission, "negative regulation such as that contained in the 1970 and 1975 Acts can do no more than scratch the surface of the problem". Against such a backdrop, a more adventurous analysis of alternative approaches to the concept of discrimination and enforcement of anti-discrimination policies is called for. While the author saw fit to quote Chief Justice Berger's finding that "...good intent or absence of discriminatory intent does not redeem employment procedures... that operate as 'built-in headwinds' for minority groups and are unrelated to measuring job capacity", he did not bring forward comparative materials which were far more central to the theme of his book—such as developments regarding the specific enforcement of anti-discrimination orders regarding placement in employment and the growth of the concept of affirmative action.

As a book on the history of English Legislation regarding the working
woman, the book is highly informative and interesting and the analysis of current statutory sections and the case law on them is exhaustive.

Frances Raday

JUSTICE. Edited by Eugene Kamenka and Alice Erh-Soon Tay [Edward Arnold, London, 1979, viii + 184 pp., £4.50].

As Julius Stone has written in the chapter he contributes to this book: "The appeal to justice, which is so persistent and endless in human society, prods us to provide reasons why some solutions proposed as 'just' deserve more approval than others..., or why situations condemned as 'unjust' deserve corresponding disapproval." The search for some single criterion by which to determine the presence or absence of the quality of justice has not succeeded.

From the very start, so to speak, of Western civilization (and this book addresses itself to that alone) the Aristotelian concept of justice has been dominant. That concept placed the emphasis on equality—treating equals equally and unequals unequally in proportion to their inequality. Even with the perception of the difference between corrective or commutative (arithmetical equality) and distributive justice (geometrical equality), contradictions and inconsistencies, and the difficulties they engender at all levels, emerge when this concept is applied. The essays before us—and in particular Prof. Barry's "Justice as reciprocity" and Julius Stone's "Justice not equality"—are almost entirely concerned with pointing out these difficulties and demonstrating in the result the inadequacy of the notion of equality in its different senses.

Two main lessons to be learned from the debate recorded in this book (conducted at a symposium in Sydney in 1977) are first that there are varying concepts of justice which do not merely address themselves to different problems but conflict among themselves and are not resolvable into an integral and coherent theory of justice which all rational beings must accept. Justice is not unbound by time or independent of the moral sentiments of actual people and actual societies, immune from ideology or interest. The point is well made by the Polish scholar, Wieslaw Lang, in his "Marxism, liberalism and justice" where, apart from the Marxist phraseology, he shows that existing theories reside and are, if at all, only reconcilable within the framework of western bourgeois liberal assumptions and doctrines, notwithstanding that formally they are very close to the Marxist maxim of