

## Justice: An Historical and Philosophical Essay (Book Review)

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## BOOK REVIEWS

JUSTICE: AN HISTORICAL AND PHILOSOPHICAL ESSAY. By Giorgio Del Vecchio. Edited with additional Notes by A. H. Campbell. New York: Philosophical Library, 1953. Pp. xxi, 236. \$6.00.

Professor Del Vecchio, for more than fifty years a professor, and sometime Rector, at the University of Rome, has published some fifty titles in the field of jurisprudence. His work became known in this country as early as 1914, when three of his early essays were translated in the *Modern Legal Philosophy Series*, volume X, under the title of "The Formal Bases of Law." A subsequent essay, "Ethics, Law, and the State," appeared in the October, 1935, issue of the *International Journal of Ethics*.<sup>1</sup> The present work was first published in 1923 in the *Rivista Internazionale di Filosofia del Diritto*, a review which was founded and has been edited by the author since 1921. It has waited thirty years for an English translation. Meanwhile, it has gone through several editions in Italian, and has been translated into seven other languages. The extensive footnotes and annotations to the present publication, by both author and editor, provide a valuable index to continental literature on the subject, especially in the contemporary field.

This essay has the form of an exposition of the meaning of the term, *justice*. It is in fact a thesis, presenting a novel conception of the subject. As such, it has succeeded in attracting the attention of some neo-scholastic writers, doubtless because of its support of a higher, or natural, law. The controversy which has ensued should help to lay bare the philosophical foundations of a sound legal system at the same time that it gives rise to a new and healthy vitality in the movement for a neo-scholastic jurisprudence suitable for the current world situation.

Briefly, Professor Del Vecchio's thesis begins with an acknowledgment that our concept of justice is derived from Greek and Roman thought, but he distinguishes the contributions of Pythagoras from those of Plato in the Aristotelian tradition, and emphasizes the importance of the notion of proportional *equality* of the former, over the *harmony* of the latter, in arriving at a new interpretation of Ulpian's classic definition of law, "*sum cuique tribuere*." By doing so, he reinforces the notions of "*égalité*" and of the "rights of man" which have characterized European efforts for democracy since the French Revolution. The effect of this shift in emphasis is to substitute the notion that what is proper to each person is what he may *claim*, instead of what *befits* him,<sup>2</sup> wherever the word *sum* appears. This substitution introduces an element of volition into the traditional definition which constitutes a rather shocking innovation.

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<sup>1</sup> Published in Chicago.

<sup>2</sup> P. 56.

The most impressive feature of the thesis is the importance attributed to the phrase, *ad alterum*. Not only does the author deny that a person can commit an injustice against himself,<sup>3</sup> but he also calls upon St. Thomas Aquinas repeatedly to support his view that justice applies only to another human being.<sup>4</sup> It is this emphasis on *alteritas* which has won over at least two influential neo-scholastics—Père Louis Lachance, O.P., in his *Le Concept du Droit selon Aristote et S. Thomas*,<sup>5</sup> and Monsignor Olgiati of the University of the Sacred Heart of Milan, in his *Il Concetto di Giuridicità e S. Tommaso d'Aquino*.<sup>6</sup> Criticism of the latter work by several writers in Italy elicited a reply from Monsignor Olgiati, entitled *Indazioni e Discussioni Intorno al Concetto di Giuridicità*.<sup>7</sup> All these works still await translation into English.

The solution to the controversy can be found not in disputes over definitions of terms, but rather in the metaphysical premises of Professor Del Vecchio's thesis. It is in chapter 7 of this book, which the author devotes principally to the discussion of his notion of *alteritas*, that he discloses his acceptance of critical idealism as the basis of his epistemology. This is not the place to compare the principles of critical idealism with those of moderate realism as found in the philosophy of Saint Thomas Aquinas. The most that can be said is that the differences between the two systems are so fundamental on such pertinent points as innate and immanent ideas, a priori principles, subjectivity and objectivity of human beings, pantheism, and the relation of will to idea, that no amount of quotation from Thomas Aquinas taken out of the context of his whole metaphysical system can substantiate Professor Del Vecchio's thesis in any degree.

Professor Del Vecchio has long been known as a neo-Kantian, not as a neo-scholastic, and the influence of Immanuel Kant is evidently still so strong upon him that even the principles he adopts from Hegel and Bergson do not modify his position sufficiently to warrant placing him in a different category. Like that other neo-Kantian jurist, Rudolph Stammler, he allies himself with the movement for a revival of the natural law, but his understanding of the tradition is so different from that maintained by the scholastics that it would be much less confusing if different terms could be used. The fact that Professor Del Vecchio enjoyed the hospitality of the Vatican Library during the Fascist regime has undoubtedly given him a wide acquaintance with scholastic writers, but it has apparently not yet provided him with an adequate comprehension of the basis of equality, brotherhood, justice, charity, or law, as taught in the Christian tradition. The issue is not one of tolerance or sympathy, but of truth and of our approximation to clarity and precision in our efforts to give it expression.

There are many other principles touched upon in this book, besides the concept of *alteritas*, which afford occasion for profound analysis, but there is

<sup>3</sup> P. 85 n.1.

<sup>4</sup> Pp. 70-71 n.21.

<sup>5</sup> Montreal, 1933.

<sup>6</sup> Milano, 1944, reviewed by M. T. Rooney in 22 NEW SCHOLASTICISM 241 (Apr., 1948).

<sup>7</sup> Milano, 1944.

hardly space for them here. It can be said, however, that it is a sign of our coming of age that books like this are being made available to American readers. The editor, the translator, and the publisher have done an exacting job in a very meritorious way. If the book is digested critically, it can stimulate much valuable thought, but if it is swallowed too hastily, the after-effects may require surgery to save the patient's life. In Europe, where the scholastic tradition is more or less well understood, even by those who are not Catholic, a book like this may be taken in stride without too many ill effects, but in this country, where every footnote to Aquinas' writings is assumed to express the mind of Saint Thomas, the effects could be rather appalling. For the purpose of coping adequately with books as profound and pregnant as this, nothing less than competence in philosophical criticism will suffice. This is an accomplishment which more American jurists need to possess.

MIRIAM THERESA ROONEY.\*



SEPARATION AGREEMENTS AND ANTE-NUPTIAL CONTRACTS. By Alexander Lindey. New York: Matthew Bender & Company, 1953. Pp. xii, 920. \$23.50.

This volume is a revised and very substantially rewritten edition of the author's earlier work in the same field. Changes in tax statutes and alterations in the viewpoints of the Supreme Court and numerous state courts on divorce, separation and tax questions have, the author believes, made necessary a drastic modernization of the earlier book.

As is well known, there has been a staggering and dismaying increase in the divorce rate in this country. Less known are the actual figures on the increase. Mr. Lindey points out in his foreword that the United States has the highest divorce rate in the world with nearly 400,000 divorces, affecting 200,000 children, being granted each year. Since the turn of the century, the American divorce rate has trebled, and during the last twenty-five years, divorce has broken up seven and one-half million families. Under such circumstances, Mr. Lindey is indeed justified in referring to divorce as "a grave national ill" which is "getting worse all the time."

The efforts of lawyers and judges, inadequate though they have been, to cope with the mounting problems of divorce and separation have produced many changes in the law since Mr. Lindey's initial publication appeared in 1937. The revised edition is an admirable and successful attempt to keep pace with these changes.

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