

JURISPRUDENCE AND LEGAL THEORY. By P.S. ATCHUTHEN PILLAI, (3rd Edition). [Lucknow: Eastern Book Company. 1985. xvi + 341 pp. Soft-cover: Rs. 25.00]

DEVOTED students of legal theory have reason enough to exclaim, *O tempora! O mores!*¹ as they observe the changing shades of legal philosophy, the celebration of new insights on the role and function of law in society giving way to sombre reassessments, at times, bordering on nihilism.² But then ideas never die. They merely go out of fashion or fade away like old soldiers. No room, therefore, for lamentation.

¹ “Indigenisation law as a means of economic control: the Nigerian experience.” See p. 13 of the Yearbook.

² “African responses to the International Economic Order: Lagos Plan of Action and the Preferential Trade Treaty for the Eastern and Southern African States.” See p. 81 of the Yearbook.

¹ “O the times! O the manners!” (or “O the times and their morals”).

² Some aspects of the “critical legal studies” (undertaken mostly in North America), it may be argued, come close to “nihilism”.

Just examine the *Contents* pages of books on jurisprudence published in the last eight decades of this century. You can see there a record of the rise and decline of analytical positivism, or the historical school; the staid acceptance of law and its processes and the gradual shifts in that stand with a better understanding of the interfaces of law, sociology, economics, politics and, above all, rights of individuals in an age of individualism.

Fascinating, no doubt, the history of the philosophy of law is, its intricacy and depth make a daunting task for writers of text books on jurisprudence.

Professor Atchuthen Pillai, an experienced law teacher well known in India, has been able to provide students with a comprehensive primer on jurisprudence. He has concentrated upon the clarification of concepts and terms besides outlining the nature of different legal theories giving, on the whole, an analytical flavour to his work. The book is divided into three parts dealing with "Principles of Jurisprudence", "Elements of Law" and "Legal Theories".

In the first part the author writes about classification of laws, of such distinctions as "questions of law" and "questions of fact" and of concepts such as "State". In the second, he includes most of the kind of topics that interest analytical positivists everywhere, such as legal rights, ownership, possession and the like. In the third part we find a brief but interesting account of legal theories.

While the division of the book into these three aspects is a splendid notion, I think the author has not followed through the arrangement. The result, I submit, has been a lack of overall neatness in presentation which, in turn, may leave a student with a confused view of the subject itself. For instance, Austinian legal positivism and the imperative theory of law appear in the first part while all other schools are included in the third part. This seems avoidable. Likewise, Pound's classification of the interests appears in the second part.

Perhaps, in the next edition the learned author can give some thought to the arrangement and presentation of topics. Notwithstanding this problem the book's value in elucidating difficult concepts cannot be underestimated.

For instance, the author has given three senses in which the subject of jurisprudence may be studied. First, as "the elucidation of the general principles upon which actual rules of law are based"; second, as a social science "closely allied to political science, economics, anthropology and ethics" and third, as "the philosophy of law dealing with the nature and function of law" leading to a theoretical inquiry into law and justice. Some further elaborations citing works illustrative of each of these approaches may have been welcome to me and welcome too, I think, to most interested students. Many other examples may be given of the author's elucidation of terms which will help students enormously.

Books on jurisprudence written in Asia do raise a question as to whether any elements of indigenous jurisprudence should be included. In relation to India, there is not only Hindu Law, which functioned as an independent and

developed legal system right up to the period of British take-over, but also a rich constitutional jurisprudence of some forty years' vintage.

The jurisprudence read by Asian students will continue to be dominated by classical western notions as long as their legal systems continue to function along notions that are essentially western-derived. However, text book writers can bring about a change here. In India questions as to the nature of the State and Constitution have been commented upon in judicial opinions of the higher courts. For instance, many passages in the decision of *Kesavananda Bharathi v. State of Kerala*³ are jurisprudential. I would see it as very interesting to include the more theoretical features of the Indian Parliament's power to amend the Constitution and the nature and scope of freedom of religion in India that either accepts or denies that sects may use places of worship for purposes other than worship and related activities. I make these points under the impression that John Austin has not had the last word on the nature of State and Sovereignty.

There are, indeed, many points included by the author on general Constitutional notions such as the Rule of Law. I am of the view, as indicated above, that this could be developed further to change the nature and content of jurisprudence in India.

The main strength of the book lies in its coverage but its weaknesses may be that it tries to be too comprehensive and, further, gives an impression, unintended no doubt, that jurisprudence consists of theoretical learning that has nothing to do with law, life and things as we experience them today.

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[1973] A.L.R.; S.C. 1461.