

JURISPRUDENCE : THE PHILOSOPHY AND METHOD OF THE LAW. By Edgar Bodenheimer. [Harvard University Press; London: Oxford University Press. 1962. xiv + 402 pp. U.S.\$8.75; £3 10s.]

Professor Bodenheimer believes that “scholarly effort may...legitimately be applied to a study of the foundations and postulates of the ‘good society’” (p. 178). A large portion (Part II) of his *Jurisprudence* is therefore devoted to ‘The Nature and Functions of Law’, with particular reference to the “quest for justice” and “law as a synthesis of order and justice”. For, from a practical point of view, “no philosophical or sociological treatment of the law which refuses to face the question of the ‘goodness’ of the law in addition to that of its formal validity and technical organization can provide us with an adequate insight into legal reality” (p. 178).

This approach, which clearly bears in mind the practical application of the law rather than some cold, lifeless *a priori* conceptual view, reflects Bodenheimer’s understanding of the law as a vital force: “While a system of concepts and rules is necessary in order to guarantee the reign of law in a society, it must always be kept

2. “A Fragment on Government”, preface, para. 16; and see generally *ibid*, chapter IV, paras. 20 - 41.
3. “The Common Law”, p. 44.

in mind that such rules and concepts were created in order to meet the needs of life, and that care must be taken lest life be unnecessarily and senselessly forced into the straitjacket of an overrigid legal order". (p. 174). For this reason, it is "impossible to explain the institution of law in terms of any single, absolute factor or cause. A number of social, economic, psychological, historical, and cultural components as well as a number of value judgments influence and condition the making and administration of the law. . . . The law is a complicated web, and it is the task of the science of jurisprudence to pull together the various strands which go into the making of this intricate fabric" (p. 152).

The author believes, since the web is so complicated and the fabric so intricate, that there should be a division of labour among those who write on jurisprudence, and he himself makes no attempt to include in his *Jurisprudence* any account of legal concepts. In Part I, however, there is a useful introductory summary of legal theories from the Greeks to the policy science of Lasswell and McDougal and the "value-oriented philosophies" of Cahn, Fuller, Hall and others, with Hart being described as "the spokesman for a modernized form of analytical positivism" (p. 97).

Professor Bodenheimer devotes only two pages to the 'Marxian doctrine of law', stopping short at 1917. Is it really enough to say: "After the Russian Revolution of 1917, the Marxian interpretation of law was accepted in the Soviet Union as an official creed. The doctrine, however, went through a number of substantial transformations in the decades following the revolution, and there is no indication that the process of reinterpretation and readaptation of the doctrine to the changing political scene has come to a halt. No attempt will be made to trace this development, whose end is not yet in sight fn. For a sketch of the development up to approximately 1945 see Edgar Bodenheimer, 'The Impasse of Soviet Legal Philosophy', 38 Cornell L.Q. 51 (1952). See also Lon L. Fuller, 'Pashukanis and Vyshinski', 47 Michigan L.R. 1157 (1949)." (p. 81). Again, does one provide a fair summary of Del Vecchio's views by saying that "respect for the autonomy of the human personality is to him the basis of justice" (p. 130), without indicating the extent to which this Italian legal theorist considered the Fascist State to be a proper *Rechtsstaat*?

The student of law is expected to know what the sources of law are, and in Part III of his *Jurisprudence* Professor Bodenheimer discusses 'Sources and Techniques of the Law'. Under formal sources he examines legislation, treaties and precedent. Custom is discussed earlier as an agency of social control distinct from law, and is again examined, together with such things as standards of justice, as one of the non-formal sources of law. The work is completed by a discussion of 'Law and Scientific Method', in which the role of value judgments and the aims of legal education are carefully analysed. "The lawyer must be viewed as a 'social physician' whose services should contribute toward the achievement of the law's ultimate goal. . . . The institution of legal learning, in addition to giving their students a thorough grounding in the positive precepts and procedures of the law, must teach men to think like lawyers and to master the complex art of legal argumentation and reasoning. But legal education ought to go beyond these immediate objectives and open up to the students the broadest horizons which can be reached in an encompassing view of the profession. These horizons include the place of the law in a general philosophy of life and society, its ethical aims and their limitations, and the nature and range of the benefits which a society can expect from a legal system impregnated with *the spirit of justice*." (pp 343, 345, italics added).

In 1960 Dr. Wetter published his *Styles of Appellate Judicial Opinions*. While Professor Bodenheimer is himself a master of style, he is not concerned with the form in which judges express themselves. He does however conclude with a chapter on 'Techniques of the Judicial Process', in the course of which he investigates the interpretation of constitutions and of statutes, *stare decisis* and the *ratio decidendi*, closing with an exposition of the creative function of the judge.

Writing in the first volume of the *Journal of Legal Education* (1948), Professor Fuchs said that "today's major need in training lawyers lies in the development of understanding of the institutions and problems of contemporary society, of the lawyer's part in their operation, and of the techniques required for professional participation in solving the major problems with which lawyers deal". Accepting this

as correct, all that need be said is that Professor Bodenheimer's *Jurisprudence* clearly recognises the true function of the lawyer in society and is a major contribution to his legal training.

L. C. GREEN.