

LEGAL PHILOSOPHIES. By J.W. HARRIS. [London: Butterworths. 1980.
x+282 pp. £5.95]

In terms of substance and presentation, this is a stimulating book. The author's brisk and direct presentation of the leading theories of law and legal system is bound to make jurisprudence more interesting to students. This book is intended to be introductory but is far from elementary as can be gathered from the critical and evaluative commentary on each of the theories. Old and familiar themes of 'Freedom and the enforcement of morals', 'The morality of law and the rule of law', 'Legal reasoning' and 'Justice' are invigoratingly presented. As for the arrangement of these topics, they appear in the order in which the author has chosen to present them. Perhaps, they could be rearranged to better effect?

Students may feel that some matters are put much too briefly. For example, at page 106, Professor Hart's concept of law (insofar as it relates to 'primary' and 'secondary' rules) gets only a mention. Similarly, students may not find Hohfeld's analysis adequately spelt

out for them to appreciate the perceptive comments of the author that follows. No doubt, the author expects students to read further. To that end, he has provided a useful bibliography at the end of each section of his book.

Harris denies that a study of 'general jurisprudence'¹ is necessary in order to make a 'good lawyer'. He feels that 'particular jurisprudence' may bear more directly on the professional lawyer's concerns. It is through the study of substantive legal subjects that one acquires "those technical skills of legal reasoning and legal argumentation which make up the concept of 'good lawyer' ". Clearly, this is a controversial matter, as Harris admits. I would like to add some brief comments on this. It may be easier to answer the question, 'what makes a good doctor or engineer?' than the question 'what makes a good lawyer?'. Clearly Harris' paradigm is the lawyer-technician who can dexterously handle his/her way through litigation and, perhaps, also the pre- and post-litigation negotiations. These are, no doubt, the essential functions of a lawyer. But do they form the sole basis of a paradigm in view of the experience of the legal professions in the many countries of the English-speaking world?

Law as a discipline has been increasingly regarded much more of a social science than the average law-practitioner would be prepared to recognize.

Certainly, we need the lawyer-technician and we can admire any good craftsman making easy work of complex matters. But along with the admiration and awe our lawyer-technician has also managed to inspire a great deal of criticism both from the lay public and from other members of the legal profession.² What contribution does this type of lawyer make to social welfare? Is that contribution anything comparable to that made by physicians and engineers, for example? Does this expert analytical lawyer care about the nature and purposes of the laws he so sharply analyses every week of his professional life? Members of the public often feel that a lawyer-technician does precious little more than earn a good living for himself. At best he may have presented some hard cases to the Bench and thus spurred the making of bad law. Literature parodying this 'good lawyer' is numerous. Harris refers to Dickens in *Bleak House* as saying that the one great

¹ "General Jurisprudence deals with speculations about the law; particular jurisprudence, with speculations about particular legal concepts. Every lawyer has from time to time to analyse terms of art appearing in legal materials. When is a concept employed in the law fit for jurisprudential analysis as distinct from ordinary legal elucidation? I suggest that no line is to be drawn. There is a continuum from very concrete questions — like, what does this word mean in the context of this statute? — to very general questions — like, what is the essence of a legal right? Roughly, particular jurisprudence concerns systems of law and to different branches of law." *Op. cit.*, 4. Cf. J. Austin, *The Province of Jurisprudence Determined*, (Hart's edition) 1955, 372: "With us, Jurisprudence is the science of what is essential to law, combined with the science of what it ought to be. It is particular or universal. Particular Jurisprudence is the science of any actual system of law, or any portion of it. The only practical jurisprudence is particular."

² "It must be confessed, unfortunately, that a particular kind of uncritical slovenliness in matters outside professional skill and practice is so frequent among inferior lawyers as to be the common badge of their quality. Not that even successful ones who rose to high places have always been exempt from it." — Sir Frederick Pollock, "Lay Fallacies in the Law" in *Celebration Legal Essays* Chicago, 1919, 10.

principle of English law is to provide work for lawyers! Presumably, this acid comment was not merely upon the English law of the time but also upon English practitioners of that period. We must recognise that our lawyer-technician has had an 'image problem' from the age of Hammurabi right down to our times. Do we confer this title of approbation upon him regardless? Perhaps, Harris might have gone into the matter in greater detail having raised it in the manner he has.

I happen to think that professionals, especially lawyers, cannot escape social accountability. Harris says:

Jurisprudence has to do, not with the lawyer's role as a technician, but with any need he may feel to give a good account of his life's work — either to fellow citizens, or to himself, or to any gods there be.³

My response would be that this is not a matter of choice for the lawyer. It is in the interests of his profession and, therefore, of himself that he regards it as his duty to give a good account of his life's work. Perhaps, it is true to say that lawyers' historic contributions have been not as lawyer-technicians but as statesmen, political theorists, law-reformers and as leaders.⁴

There is yet another 'jurisprudential' dimension that he must note. In our era the lawyer-technician is not immune from the effects of purposive legislation (whose background he must know to be able to perform his tasks well) and the pressures of social and economic policies.

My aim here is to say that the lawyer-technician cannot take pride in his ignorance of the concerns of 'general jurisprudence'. On the contrary, he needs to take an interest in them for 'professional' reasons. This does not mean, however, that he must do a course in 'general jurisprudence' or master the theory of essences or grasp the ramifications of the progression from rationalism to empiricism to structuralism,

I would recommend this thought-provoking book to our undergraduates for a careful reading.

T.K.K. IYER

³ Harris, 2.

⁴ See T.K.K. Iyer, "Lawyer's Role and Leadership Function" in B.N. Pandey (ed.), *Leadership in South Asia*, Vikas, New Delhi, 1977, 73.