

JURISPRUDENCE — THE PHILOSOPHY AND METHOD OF THE LAW. By Edgar Bodenheimer. Delhi : Universal Book Traders, First Indian Reprint, 1996. Pp. VIII+463, Rs. 340/-, ISBN 81-7494-009-X.

The book under review has been written in 1962, although the genesis of the book goes earlier to 1940, and continues till date as a text book for the law students, law scholar and teachers throughout the world. The basic purpose of the book is to give aid to students of law and politics who are interested in the general aspects of law as an instrument of social policy. The book under review comprises of XVIII Chapters and has been divided into three parts. Part I is devoted to historical introduction to the philosophy of law which is sub-divided into 9 Chapters. Chapter I deals with Greek and Roman legal theories such as Zeus, Delphe, Plato and Stoic Philosophers. Chapter II deals with the legal philosophy in the middle ages and early Christian doctrines, the thomist philosophy of law and the medieval nominalists. Chapter III deals with the classical era of natural law with reference to Grotius and Pufendorf, Hobbes and Spinoza, Locke and Montesquieu. Chapter III includes the philosophy of natural rights in the United States, Rousseau and his influence and the practical achievements of the classical law of natural law school. Chapter IV, German Transcendental Idealism covers legal philosophy of Kant, Fichte and Hegel. Chapter V comprises historical and evolutionary theories of law and deals with Savigny, the historical school in Germany, England and the United States, Spencer's Evolutionary Theory of Law and Marxian Doctrine of Law. Chapter VI is concerned with utilitarianism and discusses Bentham and Mill and Jhering. Chapter VII deals with analytical positivism which includes John Austin, Kelsen and neo analytical and linguistic jurisprudence. Chapter VIII, sociological jurisprudence is concerned with Pound, Cardozo, Holmes, American legal realism and Scandinavian legal realism. Chapter IX, the revival of natural law and value oriented Jurisprudence, deals with neo-Kantian natural law, Duguit, Lasswell and McDougal. Part II, the nature and functions of law is composed of five Chapters. Chapter X, the need for order is concerned with general theory of prevalence of orderly, patterns in nature, social life, the psychological roots of the need for order, anarchy, depotism, independence and autonomy of law and legal system. Chapter XI, the quest for justice deals with justice and rationality, conceptual scope of justice, natural law and justice of freedom, justice of equality, security and common good. Chapter XII, deals with the law as a synthesiser of order and justice is concerned with the relationship between order and justice, stability and change in law, the imperative and the societal elements in law and validity of legal norms. Chapter XIII, deals with law as distinguished from other agencies of social

control, law and power, law and administration, law and morality and law and custom. Chapter XIV deals with the benefits and drawbacks of the rule of law.

Part III, the sources and techniques of the law comprises of four Chapters. Chapter XV, the formal sources of the law, expounds and illustrates the treaties and precedent as source of law. Chapter XVI, non-formal sources of law is concerned with standards of justice, equity, public policies and administrative law. Chapter XVII, law and scientific method is concerned with the formation of concepts, analytical reasoning, the role of value judgments in law and the aim of legal education. Chapter XVIII, the techniques of the judicial process is devoted to interpretation of constitutions, statutes, doctrine of *stare decisis*, and discovery and creation in the judicial process.

The treatment of the subject as referred to above is diverse and highly critical. In Part I, the historical introduction to the philosophy of law, the author has essentially described the philosophy and their legal theories in the way these philosophers have expounded their philosophy and there is no critical appraisal of these philosophers. However the merit lies in the way these philosophers have been dealt with as it makes no room for confusion. The treatment of these philosophers are more than sufficient for the teachers to teach these philosophers and their philosophies. It would be the duty of the teacher to describe these philosophers and lay bare the great works of these philosophers who have an everlasting influence in moulding the law, legal theories, and legal thinking. The treatment of the various philosophers in Part I makes one to discern that the author has developed a thread of earlier philosophies and the same has been spread to the modern philosophies and well developed theories such as historical, analytical and sociological. The author has come out very successfully. It may be pointed out that Part I is essentially the evolution of jurisprudence and the treatment encapsulates centuries of development wherein jurisprudence has been unending and beset with many difficulties. In reality from past to present, the problem of achieving justice in human relations is the most challenging and vital problem of social control through law. Above all, it is one which is by no means impervious to the method of rational arguments. Philosophy as dealt in Part I have used different methods to reach conclusions as to how the law can achieve the purpose of social control. The author has tried his best to demarcate the approaches and methods implied in various philosophies and philosophers with detachment and has discussed the issues which these philosophers have thrown up in relationship to law and society with detachment and full sense of justice to these philosophers. Secondly, the author's treatment of these philosophers have provided tools for the teachers teaching the subject of jurisprudence so that the teachers can convincingly demonstrate the nuances of the various legal philosophies provided by the various philosophers with the materials con-

tained in the book, teachers can with little difficulty put across to the students the essential of these philosophies.

With the legal theories as the basis of jurisprudence, it partially explains the totality of law, legal system and its relationship to society. However, this partial explanation can be explained with the philosophers work which is the outcome of their own historical times and to understand the historical times, the best legal philosophies are required. The author beset with these philosophers have been the best philosopher of their time and have tried to explain the law and legal system as found and felt in their historical times to the best of their understanding. It may be that inequality in society in those days was strongly threatening the foundation of the society and the quest of the philosophy was for greater equality and social change. Part II of the book deals with the treatment of substantive problems of general legal theories and the author has developed themes on certain methodological assumptions which are implicit in any approach, to the subject of jurisprudence. Therefore, the author has convincingly co-related the questions concerning the achievement of equilibrium in human relations notwithstanding the difficulties which the author may encounter while attempting to develop such a relationship. Part III accordingly deals with an overall social relationship and how the legal system had essential function of achieving order and justice. The law and its relationship with order and justice, is highly amorphous and the author in this part of his book has described the concept of order in terms of existence of some major infirmity, continuity and consistence in the operation of natural social process. The narration of its order on the other hand indicated the problems of discontinuity and irregularity and absence of intelligibility pattern manifesting in the occurrence of unpredictable jump from one state of affairs to another. The author has done a remarkable job in developing the thought in this part of the book and the discussions are not only absorbing but highly illuminating. The author has really made subject matter of this part pregnant with instruction. Part IV of the book, the sources and techniques of law needs further comments. The treatment of the subject legislation, custom and precedent as source of law are interesting. The distinguishing feature between formal and nonformal sources in terms of categorisation of the source of law have been clearly maintained. The formal source of law such as legislation, custom and precedent has been dealt extensively and the author has given an overall view of the sources. So far as non formal source of law are concerned, the author illustrate the non formal source in terms of standards of jurisprudence, equitable social policies, the reasonableness of customs and treats this subject very well. In terms of aims of legal education, the author emphasizes that the lawyer who has engaged in any lawyering capacity either as legislature, adviser, lawyer, counsel, deciding the cases as judge, there is a major need to train these lawyers

and make them understand the institution, law and the problems of contemporary society. The second aim is to arm the lawyer with the techniques required for professional expertise, so that the lawyers can solve the problems with ease. However, if the teacher is not himself a professional lawyer and half baked in his understanding of law and the tasks the lawyer has to achieve, teacher of law cannot be a true teacher of law. A teacher having some proficiency in the theories and least knowledge of practice of law and legal system, is always handicapped in approaching problems of law and legal system, as the law is a part of total life society and does not exist in vacuum. Law cannot be compartmentalised as a self sufficient social science discipline to be sealed off from practice of law as many decisions of courts and structural innovations in institutions and otherwise cannot be understood and properly analysed unless the teachers have practised the law and have seen the institutions from close quarters. In case the teacher is completely bereft of actual practice of law and institutional understanding the teacher merely teaches from ivory tower and lawyer produced by him will be a block head. In the final analysis the institutions of legal learning must provide teachers and instructors who can teach the students to master art of legal argument and reasoning and also should go beyond to give the students a true view of the profession. For that the teachers must not only have an academic degree but also professional competency and the book under review is perhaps one of the tools with the teacher for developing legal arguments.

In the final analysis the subject matter of jurisprudence dealt in this book is very broad encompassing various thoughts and developing relationship between the law and judicial process. The author has done extremely good job in presenting the complexities of the subject in simple and straightforward manner, within the limitation which the writer of the book of jurisprudence encompass. The book under review is scholarly and can be pursued by an average student of law and legal profession.

It is a great contribution to the literature of jurisprudence. It is one of the best books in the field of jurisprudence which has also been in existence for the last four decades and has achieved a status of its own. No lawyer, no judge, no law practitioner and law scholar can do without this book.

It is highly praiseworthy on the part of the publishers, Universal Book Traders who have brought out an Indian reprint which would make the book accessible to all those who are interested to pursue the science of jurisprudence, a *sine-quo-non* for every lawyer, law student, law professor and judges of the Courts.

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