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Bodenheimer: Jurisprudence, The Philosophy and Method of the Law

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For example, population growth in the London green belt increased at a rate which was 4 to 6 times the national average.

Reference to the increasing interest of American planning in the green-belt concept was likened to the English experience, in that the motivations of the American program are not entirely clear and the ideal has not been precisely defined. As American open space programs develop that are based upon variations in the physical environment, perhaps the challenge that American planning authorities develop green belts without inviting all the complicating effects of a permanent green girdle is already being met. The increasing use of flood-plain regulations to realize urban open spaces shows that American planning and zoning is becoming less arbitrary and, therefore, moving away from the English practice. In any event, an understanding of the administration of English green-belt controls as presented in this book would be beneficial to American land-use planning and zoning officials who are contemplating open space programs that would be patterned after the English system.

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Jurisprudence, the Philosophy and Method of the Law. By EDGAR BODENHEIMER. Cambridge: Harvard University Press, 1962. Pp. 402. $8.75.

In the present volume, the author has presented most of the material of his *Jurisprudence* (1940) as a historical introduction, describing, without criticism, most of the recognized legal philosophies from the early Greek discovery that religion and philosophy could be separated to the twentieth century revival of the Natural Law. Arrangement is chronological and the treatment of each era is such that the individual philosophies then current come alive as an integral and inevitable part of it.

While criticism has been left for the classroom, the concluding chapter of this section points out that each philosophy, in turn presented a different, but inadequate, view of the whole. The Law has never been autonomous, but in reality has reflected the necessities as well as the habits, morals and customs of its time. It cannot be explained in terms of any one factor or cause, or in terms of any one legal ideal.

Law can only be explained in terms of its relation to the historical, political and sociological climate in which it exists and of which it forms a part. The author has attempted to formulate his own approach in terms of present conditions while avoiding past errors. Of necessity he has chosen a selective approach to the issues properly falling in the field of jurisprudence which need attention in our time.

The "Nature and Functions of the Law" in a less dramatic, but more erudite manner than that expressed by Max Radin in his "Law and Mr. Smith," describes the "Need for Order" and the "Quest for Justice" as basic and perennial and the Law as a synthesis of the two. "Law as Distinguished from Other Agencies of Social Control" such as power, administration of the state, customs and morals are also presented, as well as the benefits and drawbacks of the Rule of Law.

The section on the "Sources and Techniques of the Law" is used to present the authors own philosophy of Law and its sources, and is not intended as a

manual on this subject. He differs from Gray and others who considered "Law" to be the rules laid down by courts in their decisions, and asserts it to be the "aggregate and totality of the sources of law used in the legal process."

His approach to the sources of the law, which he divides into formal and informal, is also novel. The first he defines as being available "in an articulated formulation embodied in an authoritative legal document" and includes "Legislation," "Delegated or Autonomic Legislation," "Treaties and other Consensual Agreements," "Constitutions" and "Precedents." The informal sources include standards of justice, principles of reason and the nature of things, individual equity, public policies, moral convictions, social trends and customary law. The nonformal sources should be treated as genuine sources, enabling the judiciary to "discover" law and to avoid the accusation of "law-making" at every departure from the formal sources.

While conceding the necessity for the scientific method in legal reasoning, he agrees with Morris Cohen in that "The law . . . never succeeds in becoming a completely deductive system" but "ought to go beyond these immediate objectives and open up . . . the broadest horizons which can be reached in an encompassing view of the profession."

Mr. Bodeheimer is an expert in his field, equally at home with history and with the problems of today. His historical presentation is a concise and impartial introduction for the student and a refresher for the busy practitioner. His own philosophy of the law, its sources and techniques comes close to describing the relation of law to present society, and its current trends. Such knowledge is necessary in order to prevent the lawyer from becoming a "mere workman" according to Scott, a "mere blockhead" according to Brown, or a "public enemy" according to Brandeis. This book is a good place to start.

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From Ritual to Royalties: An Anatomy of Literary Property. By RICHARD WINCOR. New York: Walker & Company, 1962. Pp. 153. $3.50.

Who owns Sherlock Holmes? Are literary characters a new form of property? These are some of the unusual questions posed in this pithy work by an author who is reputed to be one of the foremost living experts on copyright law. Unfortunately, this book will not qualify the reader as an expert, nor for that matter, provide any professional utility, but it is an interesting excursion into the historical concepts of literary works as property.

Historically viewed, the protection of copyright as equated with literary property, and the concomitant cause of action for infringement, emerged only a few hundred years ago as a corollary to the printing press. But it was an art-form much older than reading that provided the genesis for the concept of ownership in literary property: the theatre. Within this broad generic term, the author traces the prerogative of certain persons in antiquity to perform esoteric rituals and ceremonies in the capacity of magicians, priests and kings, and who by virtue of said prerogatives, literally ran early societies. By knowing the *magic* words and imposing a strict system of who would succeed to these words, a clearly delineated property right in said words or ceremonies emerged. As magic evolved into cults, these secret words became more elab-