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Book Reviews: DELINQUENTS, THEIR FAMILIES AND THE COMMUNITY. By C. Downing Tait, Jr. M.D. and Emory F. Hodges, Jr., M.D. and JURISPRUDENCE: THE PHILOSOPHY AND METHOD OF THE LAW. By Edgar Bodenheimer.

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BOOK REVIEW

DELINQUENTS, THEIR FAMILIES AND THE COMMUNITY. By *C. Downing Tait, Jr.* M. D.† and *Emory F. Hodges, Jr.*, M. D.‡ Pp. xvii, 199. Charles C. Thomas, Springfield, Illinois, 1962. $6.75.

The question of delinquency is a problem that our society has been attempting to solve for years and yet, with advanced scientific methods and knowledge and with fuller acceptance of psychiatric techniques, we still have failed to institute adequate preventive measures. In fact, we are not sure what measures should be taken. As a jurist, I have seen teenagers brought before the bar of justice on a minor or petty charge. But because of their age, background or social status, I have taken time to explain to them the rules which we are expected to obey and that people in a civilized society have certain duties and responsibilities to the public, to specific individuals, and to property. And yet, within a few months, I have seen these youths before be again charged with more serious crimes. Then I realize that I have failed, that my short lecture had been useless, and that this youngster is facing a life of crime and instability.

I have talked with criminologists, psychiatrists, social workers and penologists on this point and it seems to me that they are as confused and perplexed about the problem as are judges. Even though we can predict which youth is going to fall next, we appear to be helpless in preventing it. We take vaccines to prevent smallpox and polio; we condemn unsanitary houses in order to prevent the spread of disease; we install traffic lights at dangerous intersections in order to prevent automobile accidents; and yet we have no plan to prevent a youngster from falling into a life of crime.

Within the past fifteen years, government, realizing the consequences of blighted neighborhoods, has entered into multi-million dollar programs of urban renewal. City blocks have been cleared. New and better housing has been provided for displaced families. Play areas with open space and proper landscaping has been provided for the children. In effect, we have removed the physical results of

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blight, but have we treated the cause of such a condition? Families have been uprooted from a social unit to which they belonged—a social unit which needed them. Have we tried to rehabilitate these families so that they can realize and understand that they owe certain duties and obligations to members of their families and society? Unless this is done, the grand buildings of today will be the breeding places of blight by 1980. Slums are not created by physical buildings alone. Without people in these buildings such conditions do not exist. The buildings have been replaced, but have the people who lived in these structures been changed?

In 1954 Doctors Tait and Hodges set out to study juvenile delinquency as part of a city-wide program of the District of Columbia Commissioner's Youth Council. Part I of the book reports their conclusions.

In attempting to determine delinquents, the authors found that predictions based on Glueck scores proved correct six or seven times as often as incorrect. These scores are computed by method of predicting delinquency set forth by Professor Sheldon Glueck and Dr. Eleanor Glueck. According to this system, five factors are rated: discipline by the father, supervision by the mother, affection of the father, affection of the mother, and cohesiveness of the family. A score of 250 or more rates the child pre-delinquent.

Secondly, the authors report that results of the treatment program, which consisted largely of social casework, indicated that the treated group had no fewer, and possibly more, delinquents than the untreated group. These discouraging results forced them to search for more effective methods of delinquency prevention. Thus, Part II of the book is devoted to their proposals for a new approach.

The authors indicate that since the family is the heart of the delinquency problem, the patient to be treated is, in most cases, the family unit and not a particular individual. The authors recommend that a

> [F]amily planning unit be established which would include representatives of the involved city agencies . . . . This family planning unit would have responsibility for identification of disabled families in the community, evaluation of them in diagnostic and prognostic terms, planning and executing treatment programs, maintenance of appropriate records, making periodic reviews of the families and the treatment results, and insuring the continued provision of services as long as needed to deal with the family problems.[1]

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This process would reveal socially incompetent families. For these families the authors suggest the intriguing and provocative plan of establishing separate family therapeutic communities or family hospitals.

These special sub-communities would be established within the larger community and would be administered by personnel authorized and trained to design a therapeutic environment to meet the family's needs. The goals of such a program

> [W]ould be to help these families rehabilitate themselves, and meanwhile, to compensate for the failures in family functioning whenever possible. Thus, for example, if a mother failed to provide a meal for her children, the children would still be fed.[2]

This proposal is similar to the system of family diagnosis operating in the Netherlands. Under the Dutch system only families diagnosed as anti-social are considered for admission to these special camps. A family is provided with basic furniture for which they pay in weekly installments. A social worker and a trained homemaker, who help the mother with the housework, are assigned to the family. The father's earnings are handed over to the bookkeeper who calculates whether or not it will cover the family's basic needs. If necessary, a subsidy is given. In short, the family is supervised and observed in a more or less controlled atmosphere.

Such a proposal raises many basic questions. Is this a function that government should undertake? Is this undue interference with a family's right to live where and how it wants? Would such a proposal make these families more dependent upon public agencies? Would the cost be prohibitive? Is a nation that cannot agree on a plan of medical care for the aged prepared and willing to undertake such a function? Will this lead us to complete socialization? Is it a cure-all for all social sickness? The authors try to answer these questions, but their views require scrutiny and closer examination by all interested in delinquency and in the broader problem of family social problems. To these persons, I recommend this book, not because of the statistical facts but because of the far-reaching plan advanced by the authors.

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JURISPRUDENCE: THE PHILOSOPHY AND METHOD OF THE LAW. By *Edgar Bodenheimer.*†Pp. xiv, 402. Harvard University Press, Cambridge, Massachusetts, 1962. $8.75.

In this volume Professor Bodenheimer has augmented his earlier work on jurisprudence.[1] The stated purpose of this, as well as the prior book, is to aid those who are interested in law as an instrument of social policy.[2] The book is divided into three parts. Part I is labelled an HISTORICAL INTRODUCTION TO THE PHILOSOPHY OF LAW, and summarizes the various schools of jurisprudential thought. Part II, THE NATURE AND FUNCTIONS OF THE LAW, deals with what the author believes to be the goals of a legal system. Part III, THE SOURCES AND TECHNIQUES OF THE LAW, probes the methodology that the institution of law utilizes in achieving its goals. The latter part represents an important contribution to the literature of jurisprudence, and is perhaps the most significant aspect of this book.

In summarizing the various philosophical schools, Professor Bodenheimer starts with the early Greeks and traces the development of jurisprudential thought up to the contemporary value-oriented philosophers. As the different legal theories are discussed, the concept of justice is stressed. The reader later discovers that justice is an important component of the author's philosophy of law. But this emphasis on justice does not detract from the presentation that is made in the first part of the book. However, it is an admittedly difficult task to attempt to summarize a number of prolific philosophers in the short space of 150 odd pages. The choice of material must be somewhat arbitrary and coverage must be brief. Yet brevity[3] can result in an incomplete or distorted image of a philosophy. For instance, in summarizing Pound's sociological jurisprudence, the author first shows that Pound was influenced by James. He sets forth Pound's theory of social interests, and then discusses Pound's view of justice. Any summary of Pound's philosophy of law would seem to be inadequate unless it dealt with the jural postulates and their relationship or inter-relationship to the theory of social interests. Moreover, Pound's concept of the five stages of legal history is worthy of mention. Similar criticism can be directed towards the

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1. BODENHEIMER, JURISPRUDENCE (1940).

2. BODENHEIMER, JURISPRUDENCE, vii (1962).

3. An extreme example of brevity can be found in the author's six line treatment of Max Weber. *Id.* at 105.

author's treatment of other philosophers.[4] Nevertheless, Professor Bodenheimer has generally presented scholarly and interesting summaries of the legal philosophers that he discusses.

The first part of the book is summarized in the last section of chapter nine. It is at this point that the reader first receives some concrete insight into the author's philosophy of law.[5] He poses the question as to whether there is any rational thread running through the perplexing multitude of legal theories. He feels that it is possible to logically structure jurisprudence by adopting the meritorious contributions of the various philosophies. This is called a synthetic jurisprudence, and is viewed as superior to one-dimensional theories of law. This eclectic approach utilizes scientific, societal, and other nonlegal components of civilization to solve various legal problems. Of the many problems that must be solved, the author thinks the most eventful task confronting the law is the achievement of justice in human relations.

Next the author analyzes the goals of a legal system. Man, he asserts, is constantly searching for order. Law aids in this quest by seeking to avoid chaos as well as anarchy and despotism. Moreover, the order element must be linked to man's pursuit of justice; *i.e.,* law is a synthesis of order and justice. After distinguishing law from other agencies of social control, the benefits and drawbacks of the rule of law are investigated. The institution of law promotes cultural pursuits and peace, as well as adjusting the conflicting interests of society. The law, in fulfilling its functions, must not be too rigid or inequitable. The author feels that a mature system of law must blend rigidity with elasticity. In developing this analysis, Professor Bodenheimer thoroughly delves into the concepts of order and justice. He constantly reiterates the importance of legal recognition of the social and economic factors that shape society's institutions. At times the author tends to be too lengthy, but on the whole the discussion is good, and discloses the author's strong humanistic bent.[6]

Part III scrutinizes the sources and techniques of the law. One interesting and comprehensive chapter deals with the scientific method and its relationship to law. The same can be said of the chapter that discusses the judicial process. In the latter chapter the

4. In discussing Holmes, the author does little more than quote several famous passages from his writings. This summary presents an incomplete and distorted image of Holmes' philosophy.

5. This is by design. The author states in the preface that little critical commentary will be found in the first part of the book.

6. This part of the book has been severely criticized. Cohen, Book Review, 8 NATURAL L. F. 195 (1963).

author does, however, espouse a debatable theory concerning the doctrine of stare decisis. He feels that if a court decides to overrule a precedent, it can refuse to apply the new principle to the instant case on the basis of equitable estoppel. Prospective overruling, it is argued, avoids the retroactive effect of overturning a precedent, and is at least justifiable where one of the parties can prove reliance on the old rule. In contrast to this thesis, it can be said that a statement of prospective overruling in an opinion would be mere dictum which would tend to promote uncertainty in the law. Furthermore, the fact that there was reliance on a prior decision does not make the author's argument any stronger. Every litigant assumes the inherent risk that the court might discard a precedent in the disposition of his case.[7]

Professor Bodenheimer presents a provocative analysis of the sources of law, formal and nonformal, which provide a frame of reference for the judiciary. Formal sources of law are "sources which are available in an articulated textual formulation embodied in an authoritative legal document."[8] He ably probes the formal sources—precedent and the various species of legislation. The comments pertaining to the characteristics of legislation are especially worthy of perusal.

One of the most absorbing chapters in the book is the one that deals with the nonformal sources of law. The author defines nonformal sources of law as "legally significant materials and considerations which have not received an authoritative or at least articulated formulation and embodiment in a formalized legal document."[9] Nonformal sources of law are important points of reference to the judge who must decide a case that is not controlled by a positive legal norm. Professor Bodenheimer believes that a theory of nonformal sources of law is imperative in view of the inability of the positive law to deal with every conceivable situation. Accordingly, the author constructs a hierarchy of nonformal sources of law. As a general proposition, he feels that a judge must follow the positive law, and cannot depart from it even in the interest of justice. Justice can, however, guide a judge in resolving questions that are unsettled by positive law. Yet in the unusual hardship case the judge, subject to limitations,[10] can depart from the positive norm and dispense individual

7. For a comprehensive discussion of prospective overruling see Levy, *Realist Jurisprudence and Prospective Overruling*, 109 U. PA. L. REV. 1 (1960). The author cites this and several other articles in note 21 on page 374.

8. BODENHEIMER, *op. cit. supra* note 2 at 271.

9. *Ibid.*

10. The judge's power to dispense individual equity would be limited to cases that are subject to appellate review. Furthermore, the judge could only exercise this prerogative where the application of a positive rule would yield an

equity in order to achieve justice. The scheme of this hierarchy also permits courts to look to public policy, reason and the nature of things, moral convictions, social trends, and customary law. Where the foregoing conflict with fundamental standards of justice, the latter becomes the preferred maxim. If custom defies a well established public policy or strong social trend, the court is then free to repudiate the custom under the test of reasonableness. In formulating this theory Professor Bodenheimer has definitely discussed the nonformal sources of law and has used numerous well chosen examples to buttress his conclusions.

This book covers a wide range of ideas. Part I fulfills the need for short summaries of the various legal philosophies. Many will disagree with much of what is said in the last two parts of the book, but this is to be expected, since the formulation of any legal philosophy will prompt debate. However, this in no way detracts from the author's efforts. As has already been pointed out, Part III is probably the most significant aspect of this volume. In view of the fact that many of our legal and social doctrines are now being reexamined, the observations which Professor Bodenheimer makes in this latter part are timely.

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unreasonable and wholly unacceptable result. Where a statute is involved, the judge must also be able to conclude that the legislator would have created an exception to the rule if he had foreseen the occurrence of the situation.

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