

## BOOK REVIEW

### ENNIS LLOYD, INTRODUCTION TO JURISPRUDENCE

(Second Edition, Stevens, London 1965)

*Reviewed by R. M. Cummings\**

This book by Professor Lloyd, who is Quain Professor of Jurisprudence in the University of London is a revised edition of the book that first appeared in 1959. Both this edition and its predecessor set out, as the author states, "to provide the student with a textbook enabling him to make the acquaintance of the theories and ideas of leading jurists on the basis of texts selected from their actual writings, together with a reasonably full commentary in the form of introductory chapters to the various sections of the book and full annotation of the texts."

Any reader familiar with the subject of Jurisprudence (as the word is used in the English or American sense) will be impressed by the degree of success of this book in achieving what it sets out to do. The student is exposed to ten basic topics, which are not intended to be all-inclusive. The areas selected for examination are marked by a high degree of relevance (the nature of jurisprudence, the meaning of law, natural law, sovereignty and the imperative theory and analytical positivism, the pure theory of law, the sociological school, American realism, the Scandinavian realists, custom and the historical school, and the judicial process) and the writers by their importance and lucidity, ranging from the great Greeks to contemporary theorists. The inclusion of actual cases to illustrate philosophical points is most welcomed and happily not overdone (there is a danger in the use of cases in Jurisprudence books that the basic theoretical problems may be overwhelmed by practical illustrations). The notes containing the author's point of view are extremely helpful, and are the least out of place, considering the importance of Professor Lloyd as a Jurisprudential thinker in his own right. In short, the book can be highly recommended, particularly for use in a course on Jurisprudence where the teacher prefers to use a single book on the subject.

There can be no arguing with the selection of subjects and writers in such a book since the author, whose scope is really quite enormous, has exercised a degree of judgment which is clearly within his discretion. Any omissions for the purpose of a course of study can be readily supplemented. Indeed, Professor Lloyd points out some intentional omissions from the first edition, and suggests reading matter on these topics should one wish to pursue them.

This reviewer's personal predilection causes him to wish that Professor Lloyd might have chosen to examine certain aspects of socialist theories of law even though his explanation for eliminating this subject from the second edition is quite sound. Without having gone into a discussion of comparative law and the Soviet system, (one must wonder if this problem does not exist anyway in the examination of

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American realism and Scandinavian school) the views of Marx and Engels on the ultimate abolition of law would have made the book more complete. The simple invocation of Kelsen and the need for sanctions is not really enough to deal effectively with the problems raised by the Nineteenth Century philosophers of social revolution. This reviewer's experiences as a teacher in Africa forces him to conclude that the issues of socialism in law must be met head on and should not be underestimated.

The value of Jurisprudence at this time in history is extremely great, simply because the idea of the rule of law has never been so under fire. Professor Lloyd has emphasised the conflict between natural and positive law (i.e., the search for ultimate values and the notion of relative principles enforced by the State) and he has created a work from which one sees how each school can benefit from the other. Indeed, the introduction of Wittgenstein is particularly helpful in understanding the linguistic difficulties at the heart of the conflict. This emphasis on the conflict between schools of Jurisprudence, however, requires the acceptance of law and leaves little room for the arguments against law. To suggest that Marx is the anti-lawyer personified and therefore must be the subject of separate study is the same as saying that Nietzsche, the "anti-Christ", should be excluded from the study of the philosophy of religion.

The importance of the works of the revolutionary Marxist, Marcuse, amongst today's students and the emphasis on revolution necessitates an examination of anti-law theories in Jurisprudence. If present practice continues, just as "God is dead" has become the basic issue of theology, "law is dead" will become the basic issue of Jurisprudence.

Why is this the case? The most obvious reason is that the study of positive law has often neglected the notion of justice, particularly in the distributive sense, i.e., the application of a principle of proportion in the allocation of benefits and burdens in society, which can be easily confused with natural law, but is not the same thing. What is involved is the sudden realization by numerous people that violence is a means of accomplishing certain ends. Whereas natural law relies on reason in determining which values are true and false, even if ultimate emotional reactions are involved (Hume teaches us that justice is a sense), it is much easier to say that when an intellectual or even emotional method of proving the validity of social positions is impossible violence becomes the method of proof. Kierkegaard accepts the willingness to die for a belief as proof of its truth, and the willingness to die creates formidable fighters. In short, Marx, Kierkegaard and Marcuse together create a formidable opposition to the rule of law. One would hope that Professor Lloyd might choose to employ his genius and scholarship in analyzing the problems that these anti-law writers have created in a world where violence has become all too common and where law is all too often regarded as an obstacle to social progress. If Austin is right, and obedience to law is a habit, we could be in the process of getting over the habit. What more important concern for Jurisprudence could there be than the examination of the works of those who would help us overcome the law habit?