

POWER, LAW AND SOCIETY: A STUDY OF THE WILL TO POWER AND THE WILL TO LAW. By Edgar Bodenheimer. New York: Davis, Crane, Russak & Company, Inc. 1973. Pp. viii and 202. \$9.75.

In his preface, Professor Bodenheimer describes what motivated the preparation of this study and explains the approach used to explore the subject. The author notes the suspicion of many persons, especially among the young, "that law is a creation of powerful groups in the social order to promote their special interests and self-serving aims to the detriment of broader societal aims." These "skeptical attitudes and corrosive doubts" have led to a full-scale assault on the institution of law itself. In coming to the defence of the institution, Professor Bodenheimer uses an approach which he calls "philosophical anthropological". This approach is explained by the author as being holistic in orientation and interdisciplinary in investigation. It seeks to correlate and integrate the findings of the specialized sciences in an effort to gain a picture of man as a whole. Unfortunately, this preface does little to integrate what seem to be three separate essays of varying quality. Nor does it really do justice to the first essay on the anthropological roots of law whose value transcends such facile attempts to be topical.

In Chapter One, entitled *The Anthropological Roots of Law*, Professor Bodenheimer contrasts the anti-law philosophy of Friedrich Nietzsche with an examination of the psychological factors which influence humans' will to law. Both are themes which are underdeveloped in legal literature, although in relation to the philosophy of Nietzsche this may be happily so. In any event, one suspects that Professor Bodenheimer, in the best professorial tradition, is using Nietzsche as a weak and defenceless straw-man. Certainly no attempt is made to show how modern disenchantment with law as an institution compares with Nietzsche's philosophy. In fact, the pacific, love-infused, humanitarian ideal of the young seems the antithesis of Nietzsche's self-centred, power seeking man. One doubts whether any of the current generation of legal nihilists referred to by Professor Bodenheimer would put Nietzsche forward as their spokesman. Such a persuasive and timeless refutation of Nietzsche's philosophy does not need such a flimsy pretense of modernity.

Perhaps of more interest to lawyers, however, is Professor Bodenheimer's elaboration of a theme pioneered by Rudolf Bienenfeld.¹ This is an attempt to expose the psychological foundations of man's thinking about law and justice. We have come a long way from the days of Llewellyn when psychological explanations could be dismissed with the line, "I am not maundering about 'certainty' and womb-yearning or about law 'the solid' as a father-substitute or similar unnecessary tripe."² Most Canadian law schools now have courses on Law and Psychiatry. However, with perhaps the occasional exception, these courses concentrate on the civil and criminal law treatment of the ill. There is still no widespread investigation of the more general questions of what psychology can tell lawyers about humanity's yearning for law. Much more is needed. However, we must be careful not to attribute more knowledge to the field than actually exists. There may be some danger of misleading the reader by the false juxtaposition of philosophical speculation and modern social science — with the implicit suggestion that the latter is the result of empirical verification and hence more truthful. Professor Bodenheimer's treatment of Nietzsche, Adler, and Freud tends to leave such an inaccurate impression.

Professor Bodenheimer's Second Chapter on *Stability and Growth of the Law* is the weakest of the three chapters in the book. While there are some interesting

¹ *Rediscovery of Justice* (1947).

² Llewellyn, *The Common Law Tradition* 199 (1960).

excursions into Equity and American Constitutional Law, it is at this point in the book that the reader begins to wonder whether Allen's appellation "Megalomaniac Jurisprudence"³ should not be applied to "philosophical anthropology". My own, less memorable, pejorative would be "idea salad". Also at this point, the reader is likely to become oppressed by Professor Bodenheimer's wordiness and Germanic style.⁴ While such a serious subject perhaps should not and cannot be leavened with humour, at least Cardozo, Levi and Goodhart, amongst others, have shown that the subject can be written on with some grace and lightness of style. If we turn from manner to substance, this reviewer's conclusion is that the chapter is only for jurisprudence teachers with a desire to read everything. All others would put their time to better use by re-reading the classics on the subject.⁵

The third and final chapter in this slim volume is entitled Equality and Domination in the Law. In this chapter, Professor Bodenheimer returns to a more direct defence of the institution of law. Here philosophical anthropology shifts in emphasis from psychology to history. There are excellent sections on The Strong and The Weak in Roman Law and the Equality Record of Anglo-American Law. However, in general, the essay suffers from being too discursive and eclectic. From King Hammurabi to Reinhold Niebuhr in less than ten pages may be a holistic view of man and law but it does tend to dazzle the reader.

—M. G. BAER*

³ *Law in the Making* 32 (7th ed.).

⁴ *E.g.*, one short paragraph on p. 105 contains the following redundant sets of near synonyms: exceptions and qualifications; uncertainty and suspense; validity or legal consequences; known, ascertainable, or foreseeable; shifts and reversals; human well-being and mental health.

⁵ Such as Cardozo, *The Growth of Law and the Nature of the Judicial Process*; Hart, 6 *Problems of the Philosophy of Law in the Encyclopedia of Philosophy* 264 (Edwards ed.); Levi, *An Introduction to Legal Reasoning*; Goodhart, *The Ratio Decidendi of a Case in Essays in Jurisprudence and the Common Law* (1931).

* Visiting Associate Professor, Faculty of Law, The University of Alberta, Edmonton.