GLIMPSES OF JURISPRUDENCE (1989). By R.D. Yadav. Criterion Publications, New Delhi. Pp. viii + 480. Price Rs. 400.

JURISPRUDENCE IS a word of many meanings. But according to the ordinary connotation of the word, it is concerned with the theoretical framework of the law. He who writes on jurisprudence, is always faced with one serious problem. What are the areas that he should cover, and what is the depth into which he should go in discussing particular topics? On the one hand, if he descends too much into details, the theoretical flavour is likely to be lost. On the other hand, if he totally avoids detail, his work is likely to lose touch with reality. And no book that purports to deal with law, can afford to remain too much divorced from reality. Faced with this problem, many writers on jurisprudence have decided to choose the middle path. They strive to strike a balance between abstract theory and too much of practical detail.

That, for example, was the approach which Salmond adopted for himself. In his book on jurisprudence, principle and detail find a happy confluence. Like light and shade on a rainy day, his writing presents a pleasant glow, not too heavy on the eye of the mind, but at the same time, not so weightless as to evaporate in a moment. Along with this happy mean in point of substance, Salmond could also maintain a lucidity of style that was the envy of many scholars of his time. Some other writers followed a different pattern. Some of them accentuated the theoretical aspect. A few drew profusely upon comparative law to make their point. Some writers expanded the range of the subject, so as to cover topics like human rights or international law.

However, for students of law, the method of Salmond has remained a fairly satisfying model. The author of the book under review has also kept in mind the need to maintain a balance between theory and practice. At the same time, he has sought to cover some useful topics, such as Hindu jurisprudence, right to property in India, contribution of various jurists and the like.

Dicey said that jurisprudence is a word which stinks in the nostrils of a practising barrister. But there are times when even a practising barrister needs good theoretical support for what has been going on in his mind and is irritated to find that such theoretical material is scanty. That, exactly, is one of the functions of jurisprudence. Jurisprudence is to law, what logic is to thinking. All of us undergo the process of thinking, but we do not go into its depths. The jurist, the philosopher, the thinker do undertake that labour. Socrates considered philosophy as the process of getting to know something which (in another way) we know already.[1]

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1. Alan White, *Grounds of Liability* 13 (1985)

What Aristotle did as a logician, was to discover the rules which intelligent and logical people implicitly employ. Philosophers are to the users of ideas, like preachers to practitioners, critics to poets, grammarians to native speakers, map makers to explorers of the unmapped or Moliere's philosopher to M. Jourdain, "who had been speaking prose all his life, without knowing it".

Literally, "jurisprudence" means skill in the law. But, generally, it is taken to mean the philosophy of law, and that is the sense in which it is used by Austin, Salmond and many others, including Bryce.[2] It is also one of the meanings attributed to this word by the Dictionary.[3]

Continental and English approaches to jurisprudence differ from each other. The dominant element in continental jurisprudence — as, indeed, in the entire philosophical doctrine of the continent — is evaluative. In contrast, the dominant element in English jurisprudence is analytic. This is illustrated by the writings of Markby, Holland, Salmond, Pollock, Gray, Keeton, Paton and Dias, as also by the writings of Americans like Terry Hohfield and Kocourek. Of course, analysis alone does not suffice. Analysis has to be preceded by exposition. Bentham coined the convenient word "Expository jurisprudence" with this aspect in mind. Besides this, analysis has to point in some direction — which is why Cardozo said[4] that "a philosophy of law will tell us how law comes into being, how it grows and whither it tends".

The book[5] under review is divided into four parts. Part I is general and conceptual. Part II deals with the sources of law. Part III is concerned with a detailed examination of the basic concepts of law. Part IV devotes itself to the contributions of various jurists.

In the book, it is stated that "[I]t is hoped that the present work will be found useful for teaching the subject at higher level of University education. The research students may also be benefitted by this work".[5a] One can, therefore, take it that the book is primarily meant for academic teaching and research. To a large extent, the author's hope about utility of the book for students may be said to have been fulfilled, so far as its coverage goes. The major topics which a book on jurisprudence (primarily meant for students) may be expected to deal with, have been covered by the author. It would also be fair to say that the style is not very heavy, or loaded with pedantry, so as to frighten away the young student. The first ten pages of the book are highly useful, as preparing the student for an approach to the subject. The topics dealing with various schools and theories of jurisprudence, should also be regarded as useful [5b] They give an inkling of the developments in juristic thinking during the last one century or so. The discussion of basic juristic concepts is also satisfactory from the student's point of view.

However, there are several shortcomings in the book, to which attention has to be drawn, not in a spirit of carping criticism, but with the object of suggesting

2. James Bryce, *Studies in History and Jurisprudence*, vol. II, p. xii (1901).
3. See, *Oxford English Dictionary*, sense 1 *b*.
4. Cardozo, *Growth of Law* 24 (1924).
5. R.D. Yadav, *Glimpses of Jurisprudence* (1989)

5*a*. *Id.*, preface.

5*b*. *Id.* at 66-120.

improvements in future editions. The reviewer ventures to state that the book would have come out in a much better shape, if some editorial assistance to the author had been arranged by the publishers. Linguistic editing is nowadays considered a very useful aid, which the authors of specialised books can expect from the publishers. Experts are available for the purpose and their services could be availed of, by authors (through the publishers). Deficiencies in point of grammar, diction, arrangement, cross-referencing, indexing and other matters of form, can be very well taken care of, by such editors. Their trained eye and professional expertise can detect deficiencies which the specialist author (whose mind may not necessarily be geared towards achieving linguistic excellence) is likely to miss.

The point could be illustrated by referring to certain passages in the book. *First*, as to diction. Ulpian's definition of "jurisprudence" is described[6] as "comprehensive" and it is stated that "it can be applied to religion, ethics and morality". But this sentence is followed in the book by the next sentence which reads - "Consequently it was not followed even by the Romans". This becomes somewhat puzzling.

Then, Manu's view is stated in these words: "According to Manu, the Hindu law-giver, the God provided for *Danda* and punishment and gave to the King for getting it implemented"[7]. It is not clear what precisely is intended.

Again, "dower" in Muslim law is dealt with, in these sentences: "The another remarkable (*sic*) Muslim law is the conception of dower which was originated with a view to ameliorating the status of women in Arabia.... The institution of dower is unparallel (*sic*) in Islamic jurisprudence".[8]

Adoption among Muslims is discussed and the discussion ends with this sentence: "Expressing these views, Mr. R.K. Rao. Counsel for a Sunni Muslim lady Ms. A.M. Syed of Pune, has stay of the opinion of the Muslim personal law pending the final disposal of the petition".[9] Obviously, some words have been left out.

Austin's Analytical School is summarised and one of the propositions is thus stated: "There is clear cut separation of law and moral (*sic*) in the scheme of Austin".[10] Probably, "morals" is intended.

The sources of law are dealt with at length[11] and Holland's contribution about "source" has been specially mentioned. Thereafter, the fourth meaning of the word "source" is thus stated in the book" "(iv) Lastly, the term 'source of law' indicates the organs which provide legal recognition to the rule of law. Legislation judicial decisions and equitable doctrines are *such glaring examples*". The word 'glaring' could have been replaced by some more appropriate word.

Then, custom as a source of law is defined as "Custom is obtainable in almost every country." Different "thinkers have differently defined 'custom'."[12]

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6. *Id.* at 1.
7. *Id.* at 15.
8. *Id.* at 23.
9. *Id.* at 43-4.
10. *Id.* at 77.
11. *Id.* at 205-10.
12. *Id.* at 212.

Later in the book, after discussing the historical approach to custom, it is stated as under: "A mid-way — rather a correct way — can emerge out of examination of the matter, through sociological approach. Customs have been present in every society and in all ages in one or the other form".[13] Considerable editing is needed for such sentences.

Kelsen's academic career has been dealt with in two pages (which are interesting enough). Kelsen, it is stated, was Professor in the Cologne University. It is then stated: "Afterwards *he took up as* Professor of International Law at the Graduate Institute of International Studies, Geneva, Switzerland. He is the founder and *storm centre* of a school of juristic theory known as the Vienna School of Jurisprudence".[14] Some improvements are obviously needed.

Roscoe Pound's contribution to jurisprudence has been very lucidly dealt with, in the book.[15] But stylistic flaws and misprints mar the enjoyment. The treatment of the topic begins with the sentence: "Late *lamented* Pound *is* a great jurist".[16] Later, in the book there occurs this sentence: "Pound was the first *articulated messenger* to formulate the social control conception in "jurisprudence and provided the edge for sociological jurisprudence"[17]. These sentences appear to need editorial scrutiny — which, as suggested above, — could be helpfully provided to the author by the publisher.

Jhering's contribution to jurisprudence is also very well dealt with.[18] But the discussion admits of considerable verbal improvement. For, *e.g.*, we have this sentence: "According to him criminal was the *kernal* law but the history of law showed the *expulsion* (*sic*) of criminal law".

The discussion in the book of cases on possession of moveables[19] is very helpful. But the discussion relating to public corporations,[20] needs to be enlarged by more ample reference to Indian case law. The discussion as to unborn persons[21] can also be similarly enlarged, by a more detailed exposition of recent developments in medical law. As regards artificial persons,[22] there is a possibility, again, of enriching the discussion by referring to the theories that were prevalent in Hindu law on the subject. Of peculiar interest are idols, which have been considered, at length in B.K. Mukherjea's *Tagore Law Lectures on Hindu Religious Endowments*.

Such books are not written in a few months. They represent the labour of years. Those labours would be more fruitful, if a helping editorial hand could also join in them.

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13. *Id.* at 226.
14. *Id.* at 402.
15. *Id.* at 422-6.
16. *Id.* at 422.
17. *Id.* at 423.
18. *Id.* at 430-2.
19. *Id.* at 313-27.
20. *Id.* at 315.
21. *Id.* at 342.
22. *Id.* at 343.

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