

Edgar Bodenheimer and the Search for the Good

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In his *Allegory of the Cave* Plato characterized the “world of sight” as the “prison house” or the “cave” and the “journey upwards to be the ascent of the soul into the intellectual world.” Plato continued:

[M]y opinion is that in the world of knowledge the idea of good appears last of all, and is seen only with an effort; and when seen, is also inferred to be the universal author of all things beautiful and right, parent of light and of the lord of light in this visible world, and the immediate source of reason and truth in the intellectual; and that this is the power upon which he who would act rationally either in public or private life must have his eye fixed.¹

Edgar Bodenheimer began his journey “upward” to the “idea of the good” in his native Germany where he graduated from the gymnasium in 1926. He has made this journey with great personal effort. He studied civil law and political science at the universities of Geneva, Munich, Heidelberg, and Berlin. Thereafter, he served an apprenticeship assisting judges and the public prosecutor in civil and criminal courts. He received his Juris Doctor from Heidelberg in 1932 where his thesis on the principle of equality in corporate law was published.

Edgar’s steady progress into Germany’s legal profession came to an abrupt and frightening end with the political ascent of the Nazis. In 1933 the Nazi government dismissed Edgar from state service because of his “non-Aryan” origin and after a brief stint as a history teacher in a private school, he immigrated to the United States. Witnessing first hand the rise of the Nazis, losing his position because of their racist policies, and losing his native land to avoid even greater penalties has had a searing and lasting effect on Edgar and his views of the role of law in a civilized society. Later on in life, in reaction to the narrow and rigid definition of law put forth by legal positivists, he observed:

The large majority of men have always experienced law as a positive value, as an institution which is necessary and beneficial for the living

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¹ PLATO, THE REPUBLIC ch. XXV.

together of human beings in society. As the history of revolution, social struggle, and law evasion demonstrates, it has not been the preponderant opinion of mankind that the inviolability characteristic of true law must necessarily extend to sovereign commands experienced by large groups as outrageous and oppressive. It is revealing to point out in this connection that refugees from totalitarian countries always complain about the "lawlessness" reigning in these countries, although a larger part of this "lawlessness" is usually sanctioned by articulated commands of the government having all of the outer trappings of legal rules. What is experienced as lawlessness by these people is the fact that certain minimum conditions of life, liberty, and security were denied to them, and their worth as human beings was accorded no respect.²

Experiencing the denial of one's worth as a human being drove Edgar from his native land. And that experience has directed his teaching and scholarship toward the exploration of the sources of moral content in law and claims for the existence of a system of natural law.³ From personal experience Edgar knew that every legal decision is unavoidably a moral decision and that any civilized society is required to recognize every individual as a human being, entitled to the respect of basic and inherent human rights.

Edgar arrived in New York City in 1933 where he worked in a law office for two years while taking night courses at N.Y.U. law school. In 1935 he met and married Brigitte M. Levy, the daughter of Professor Ernst Levy of the University of Heidelberg, a leading and famous scholar of Roman and civil Law. Edgar's marriage to Brigitte was of great good fortune as all who knew her will attest. She was a beautiful and memorable human being and the mother of their three outstanding children. She was a wise, gentle, and sensitive human being who became an outstanding professor and scholar of law in her own right, first at the University of Utah and then at the University of California at Davis. Her untimely death was a great loss for Edgar and their children and for all of us who knew her well. It was also a great loss for a generation of students who would not have the opportunity to know this friendly, concerned, and devoted teacher.

Edgar and Brigitte studied law at the University of Washington where Brigitte's father had continued his distinguished career. There Edgar received an LL.B. in 1937 and a B.A. degree in Law Librarianship in 1939. During this time Edgar began work on a basic textbook

² Bodenheimer, *Reflections on the Rule of Law*, 8 UTAH L. REV. 1, 10 (1962).

³ See Bodenheimer, *The Case Against Natural Law Reassessed*, 17 STAN. L. REV. 39 (1964) (noting that natural law philosophy was considered eradicated in pre-World War II Germany and that a legal scholar with sympathy for the natural law view was simply not considered a respectable member of the academic community).

in the field of Jurisprudence. It was to be a devotion and a record of his journey “upward” to the good. It is a work for which he has become justly famous both in this country and many other parts of the world, particularly in South America where his book was translated into Spanish and published in Mexico City in 1942. I expect that the next part of the world where Edgar’s book will have a substantial impact will be China, for the latest edition has recently been translated into Chinese. Lawyers visiting China in the future may well find law students there carrying about “Bodenheimer on Jurisprudence” rather than Mao’s little red book.

I first encountered *Jurisprudence* in the late 1950s while writing a paper on post-World War II jurisprudence and the rebirth of natural law philosophy. While I was a graduate student at the University of Michigan, the 1962 edition was published. I quickly purchased a copy so that I could cite “Bodenheimer on Jurisprudence” in my legal process class taught by Edgar’s former colleagues at the University of Utah, Sandy Kadish and Spence Kimball — then on the University of Michigan faculty. Anyone familiar with *Jurisprudence* and its subsequent editions cannot help but be impressed by the depth of its scholarship, embracing all of the great writers of western philosophy from the classical to the modern. In a single volume, Edgar managed to explore masterfully the central issues of jurisprudence, adding an insightful explication of the nature of legal reasoning.

After his sojourn in Seattle, Edgar went on to Washington, D.C. to take a position in the Solicitor’s Office of the Department of Labor. And in fulfillment of the old adage about the wheel coming full circle, Edgar transferred to the Office of Alien Property Custodian in 1942, there to track down well-hidden German property interests in this country. In 1945 he was assigned to Mr. Justice Jackson’s Office of Chief Counsel for the Prosecution of Axis Criminality and assisted in the legal preparation of the Nuremberg war crimes trials — an historic application of natural law principles Edgar was to spend his academic career both advocating and defending. The mill of justice may grind slowly, but it grinds well.

Edgar had an abiding interest in continuing his scholarship and in teaching in a university. University of Utah’s dean, William Leary, had a legendary talent for finding outstanding law professors and luring them to Utah. Dean Leary came to know of Edgar’s interest and managed to lure him back to the West in 1946 for the princely sum of \$4,438 per annum. Subsequently, Dean Leary brought Ron Degnan, Dan Dykstra, Fred Emery, Sanford Kadish, Spence Kimball, Monrad Paulsen, and Bob Swenson to Utah.

From 1946 to 1966 Edgar and Brigitte remained at Utah: raising their children, hiking the mountains and canyons of the state, following the birth and growth of the Utah Symphony, and teaching a generation of law students. They became a unique part of the academic and cultural community; a bridge to the classical education of Europe, the intellectual life of the world, and the cultural life of fine music and great books.

I must confess that I did not know much about Utah, its University, or its College of Law when I was invited to join the faculty in 1963, except that it was west of Denver and that "Bodenheimer on Jurisprudence" taught there. I still remember my first meeting with Professor Bodenheimer. He invited me to take a walk across campus to the new law building under construction. A walk with Edgar meant he walked and his companion jogged. We talked of many things, and I had the impression that my senior colleague was a somewhat shy and gentle man deeply immersed in his teaching and research. In between pointing out buildings of interest, he mentioned that he was reading one book and then another. It was apparent that his reading was wide and diverse. Over those first few months, my impression of Edgar as a true scholar and intellectual broadened and deepened as I watched him work and read in his disciplined way. It was quite intimidating to be around so well disciplined and widely read a scholar. He would disappear into his office for hours on end, and did not appreciate casual interruptions. While always friendly and helpful to colleagues and students, one was careful about disturbing Edgar as he steadily pursued his intellectual quest. Then one day, I think I saw into Edgar's soul. It was the day President Kennedy was assassinated.

I recall hearing the news on my car radio as I was leaving the law building at Utah to head home for lunch. I went back into the building and stood in a state of disbelief in the hall talking with a member of the staff and trying to make sense of it all. I recall seeing Edgar quickly walking down the hall, his face drained of all color. I rushed over to him and we clasped hands without saying anything. For an instant, I fully appreciated what his life must have been like back in the early 1930s because I think I saw it all flash before his eyes once again in 1963. Edgar was deeply upset and unable to speak. I thought he had visions that a *coup d'etat* was underway and he might find himself stateless once again or, even worse, being treated as less than a human being once again. It was only for an instant, but I will never forget what was written on Edgar's face in that instant. I saw the lifetime of fear, anger, and torment over what had happened to him as young man and what had happened to his friends, family, and others who had not

been able to escape. I understood then why jurisprudence, and a belief in the necessity for a moral content to law if society is to be civilized, had become not only this man's life-long academic interest, but his central intellectual conviction and passion as well.

Thereafter, our friendship ripened into a deep and personal one. It is not often someone is allowed to see into another's soul. My wife Sheila and I came to know the Bodenheimer family as a close and loving one. By then their children were away at college and Edgar and Brigitte were enduring with quiet pride the necessity for buying two plane tickets to Boston for their daughter Rosemary — one for Rosemary and one for her cello — and the other dilemmas of parents who send their children away for the best education they can provide. Reports of the academic progress of their sons, Tom and Peter, were quietly shared among the faculty with a mutual sense of pride in their successes, since the Bodenheimer family was our family and we were a part of theirs. It was more than the product of a small and close faculty who enjoyed each other's company and shared each other's common commitment to providing the best legal education we could provide. It was and is a deep and genuine admiration and affection for a close and devoted family and for someone we all recognized as unique — a decent and gentle man who has devoted his life to the search for the good.

After Edgar and Brigitte left Utah to help establish the outstanding law school of the University of California at Davis, a void was left at our law school. We had lost two outstanding teachers and scholars and a bridge to the broader world of ideas and the pre-World War II culture of Europe. It was a void we knew we could not fill, except to take pride in their further contributions to legal education and legal scholarship. We continued to claim them as ours even though they now carried on their work further west from the place of their origins and the place where they had raised their family and perfected their careers as teachers and scholars. Every now and then we would hear of a new article or learn that Tom was practicing medicine in San Francisco or Peter was teaching at Santa Cruz. We learned of Brigitte's illness and death with great sadness and sympathy for Edgar and their children because we knew how central she was to their lives. Our sense of loss was deepened because of how much Brigitte had meant to us in Utah.

Later we learned that Edgar had met and married a gracious and lovely woman by the same name, a companion to carry on his journey in search for the good. Last year Edgar and his new bride Brigitte visited Utah where we had a wonderful reunion with Edgar and opportunity to meet Brigitte at the home of Jeff and Rita Fordham. It was apparent that the years had treated Edgar kindly and that once

again he had the remarkable good fortune to find a wise, gentle, and wonderful companion named Brigitte. They were off to hike about the wonders of southern Utah, a trip on which I am sure Edgar walked and Brigitte jogged.

This occasion honors this man and his life in scholarship and teaching. It is appropriate that we do so, for he is a leading scholar of jurisprudence and a memorable teacher for a generation of students. Those of us who have been fortunate to know him personally honor him and his family for what they have meant and mean to us on another basis as well. We do so on a personal level, for Edgar has meant far more to us than a colleague and outstanding scholar. He is a friend and an example to us. I suspect that he found the "good" early in his life. He discovered the importance of law to a civilized society and the importance of moral values to law when he had to leave his native country because it failed to accord to him his worth as a human being. He has spent his life teaching the rest of us the necessity that we accord each person their worth as a human being, both through our laws and through our personal relationships with each other. It is the central message of "Bodenheimer on Jurisprudence," a lesson those of us who know him and those who study his writings cannot forget. And we who know him personally know that he and his family have lived the life he has taught in their dealings with each other and all their friends, to accord to each their basic worth as human beings. It is only appropriate that we who have benefitted from the friendship and example of Edgar and his family take this occasion to proclaim publicly the love and affection we have for them and our admiration for living the moral lesson he has taught so well in his search for the good.