title; Performance, including Inspection, Acceptance and Warranties; and the seller's and buyer's remedies.

The text contains appropriate references to, and discussions of, the Uniform Sales Act and the Uniform Conditional Sales Act, both of which are printed in full in an appendix. The footnote annotations are ample. Emphasis is properly placed on the more recent decisions involving construction of the Uniform Acts. Conforming to the method characterizing the Hornbook Series, the author follows the citation with a few words which convey to the reader the issue involved in the case. The notes also present variations of the problems treated in the text. The references to recognized treatises and to valuable law review articles are numerous. In short, the work fulfills adequately the function of a handbook. It is recommended to the law student as a valuable aid in filling the gaps which case books on the subject necessarily leave; and to the practitioner as a ready reference work of reasonable compass.

The New Jersey lawyer will find apt citations of the significant sales decisions in this jurisdiction; also a compromise between the classic and the ultra-realistic approaches which may prove acceptable to our courts.

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REASON AND NATURE. An Essay on the Meaning of Scientific Method. By Morris R. Cohen. New York: Harcourt, Brace & Co. 1931. pp. xxiv, 470.

To attempt an analysis and a critique of Professor Cohen's philosophy of law without unduly becoming involved in a consideration of the possible ultimacy of the metaphysical notion of Polarity, or the logical concept of Universality, or the teleological notion of the Ideal—all schematic ideas in the fabric of his thought,—is to undertake what is foredoomed to lack logical conclusiveness, or even cursory finish. The critic, in acknowledging at the outset this undesirable foreshortening of his undertaking, blames not only the exigency of space, and the nature of the journal, but more the fact that nowhere in the volume does the author himself undertake an exposition or clarification of these notions, least of all in his treatment of the nature of the judicial process. He takes them for granted in the same way that Kant took for granted that the intuition of Space must yield not only logical, but also practical, truths. What *Reason and Nature* lacks is a prolegomena, in which the notions fundamental and active in Cohen's philosophy would be given spermatic quickening and incubatory warmth. But when one thinks of the fact that it took poor Tristram nine or eleven books in which to be born, then Cohen's method, like the invention of the Immaculate Conception, or the "spontaneous generation" of Infusoria, gains regard. Despite this concession,if in philosophy it is "dogmatic" to presuppose certain things to have existential or deontological truth or significance, without a studied attempt being made to establish their necessity—logical, pragmatic, psychological or what,—then Professor Cohen is undoubtedly a dogmatist. But perhaps with time will come another volume from Professor Cohen, which will prove to be the elephant to the world of whose nature he treats in the volume under review. We promise (for ourself, at any rate) not to ask then for the tortoise.

To the student of legal science two matters, at least, will be of interest in

*Reason and Nature;* namely, Cohen's adverse criticism of historicism, in the chapter on "History Versus Value", and his attempt at refinement of the concept of Natural Law, in the chapter on "Natural Rights and Positive Law".

Nineteenth Century historicism, Professor Cohen maintains, was characterized by four dogmas: (1) Determinism, that we cannot create our own legal system, as the past completely determines the present; (2) Organicism, that we cannot borrow the law of any other nation, for law is the expression of the *Volkgeist* (Savigny); (3) Evolutionism, that the law develops together with the national spirit through certain phases; (4) Relativism, that what the spirit creates for one stage of development cannot be adapted to another. The author's criticism is that these dogmas are, as appears, inconsistent within a single doctrine. But more, that historicism, when taken seriously, makes changes impossible — "All real changes must be contrary to what has hitherto prevailed";—and the method or school "has not a single reform or constructive piece of legislation of any magnitude to its credit".

Much of this criticism is obviously warranted; but, perhaps in part because the subject is so inadequately treated by the author, it is not altogether convincing. For while it is true that the method of the historical school has not yielded a philosophy, because it is a positivistic rather than a philosophic school of jurisprudence, emphasis on the historical criterion, rather than resulting "in a series of pious juggling of irrelevant texts and old decisions", or in "an ultra-rationalistic shuffling of concepts,—*Begriffsjurisprudenz*",—has pointed to the dependence of judicial reality upon externals and to the connection with all diverse social aspects. It is the historical school with its application of the scientific test of phenomenal relativity to juristic problems that has made the law a social science; that has brought down jurisprudence from its perch high in the inapproachable sphere of "the things in themselves", to bustle and compete in the market place. It was Maine, it should be remembered, who termed legal technicality a disease. The method, of course, when misunderstood, sometimes effects itself as a dead hand, as, e.g., in the case of *Den ex dem. Murray's Lessee v. Hoboken Land & Improvement Co.* (18 How. 272), in which the court held that what is due process is to be determined by reference only to the Constitution itself, the state of the common law and English statutory law prior to the settlement of our country, and the laws of the several States at the time of the adoption of the Fifth Amendment. But it should not be overlooked that cases of the type of *St. Louis Iron Mt. & So. R.R. Co. v. Paul,* (173 U.S. 404) and *Erie R.R. Co. v. Williams* (233 U.S. 685), and the method inaugurated by Mr. Justice Brandeis in his brief as counsel in *Muller v. Oregon* (208 U.S. 412), are direct products of the method of historicism. It is a rather invidious use of the term to identify the method with only the lazy, timid and ultra-reactionary type of mind that has characterized so many right honorables who napped upon the woolsack. The historical school, by treating juristic reality as phenomenal, by giving it a local habitation, by showing that the present social state is an indispensible cause of the subsequent state, that the law is relative to the time and place, and that what the *Volkgeist* creates as its legal system in one stage may not be possible of complete adaptation to another, has thereby shown that the logic of the law cannot be one exclusively of precedents, but, too, a "logic relative to consequences" (to borrow a phrase from Professor Dewey); that the absolutistic logic of the Aristotelian syllogism, to which the Eighteenth Century rationalists were so slavishly bound, can be

either tyrranical or emancipatory, dependent on whether or not the judges who use it are enlightened or children of darkness. *Cf.*, e.g., the opinion for the majority written by Mr. Justice Pitney in the case of *Hitchman Coal & C. Co. v. Mitchell* (245 U.S. 229) with the dissenting opinion of Messrs. Justices Holmes, Brandeis and Clarke; or Mr. Justice Swayze's opinion for the majority in *Keuffel & Esser v. International Asso. Machinists* (93 N.J.E. 429), with the dissenting opinion of Mr. Justice Minturn.

Professor Cohen's treatment of the concept of Natural Law is more gratifying, because more refined and thorough. After analyzing the four usual arguments against the theory of Natural Law (the historical, the psychologic, the legal, and the metaphysical), he turns to an examination of the difficulties in the path of the theory; which are threefold:

(a). The indeterminateness of our jural ideals. As an instance the author selects the principle of equality before the law, and examines and rejects the definitions suggested by Stammler, Brütt, Kohler, Berolzheimer, and Pound, and concludes that, "No ideal so far suggested is both formally and materially adequate to determine definitely which of our actually conflicting interests should justly prevail. So long as this is the case, law must be, as it is, in large part a special technique for determining what would otherwise be uncertain and subject to conflict. It is socially necessary to have a rule of the road but it is morally indifferent whether it requires us to turn to the right or to the left."

(b). The intractability of the human materials with which law works: (i) from the point of view of the legislator—e.g., a new law may have unforeseen consequences; the lawmaker's limited knowledge of the facts involved; subsequent judicial interpretation and construction that may defeat the end of the legislature; (ii) from the point of view of those who have to obey the law—the inherent difficulties in enforcing, e.g., the national prohibition law, or the Fourteenth and Fifteenth Amendments to the federal Constitution; (iii) from the point of view of those who have to operate the legal machinery—e.g., the imperfection of the jury system.

(c). The abstractness of legal rules. Here Professor Cohen is at one with Dean Pound, Chief Judge Cardozo, and Professor Dewey, in the conviction that legal science can be neither altogether universal nor altogether individual, neither altogether mechanical nor altogether discretionary, neither ideal nor altogether non-ethical. He says: "An uncritical reliance on the abstract universality of legal justice is the crowning ethical defect of the so-called critical philosophy. It legalizes ethics without moralizing the law. . . . Like being and becoming, unity and plurality, rest and motion, they are polar categories. Deny one and the other becomes meaningless. Yet the two must always remain opposed."

Many things might be said on some of these points, but space does not permit. For instance, is the jural Ideal only a formal concept, transcendental and pure, like a Kantian category; or is it causal or dyanamic, generative, like a Platonic Form? If law and ethics must be kept disparate, is it because their nature will not permit complete identification, or are they to be kept apart only because of an anti-Hegelian projudice that does not sanction the marriage of the ideal and the actual? In what sense, if any, is it true that, "Law is minimum ethics" (Jellinek)? Whatever Professor Cohen says is of supreme interest; but more often it is suggestive of questions rather than solutions, and this is due not so much to what he says, as to the fact that he says so little. As another

instance consider his statement that universality and individuality are polar principles in the law. It seems that it would be more consonant with scientific logic to maintain with Mill (we do not recall if the elder or the younger) that an exception when recognized really does not revolutionize the legal rule; instead, it shows the latter to be an instance of a more general rule. Leibniz had suggested the same resolution. "But at the end of the reckoning," he said in his *New Essays on the Human Understanding,* "all these exceptions and sub-exceptions clearly determined and joined with the rule must achieve universality." But Cohen does not at all enter into an analysis of these "key" notions.

It must be admitted that for one who avows himself a rationalist, this method of eating your cake and having it—by eating only a part,—seems somewhat unbecoming. But Professor Cohen, let it be said, despite his exprest reverence for them, would scarcely be hailed by the Eighteenth Century rationalists as one of their own. For one thing, he is not so headstrong—that is why he is afraid of taking too big a bite; he knows more of heaven and earth than was dreamed on in their philosophies, and increase of knowledge increased his humility. Professor Cohen is a humble man, because, for all his learning and wisdom, he knows and admits that always there is an out there somewhere that he has not yet explored, and its possibilities, like those of an undiscovered America, may be assumed to be infinite.

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